

No. 10695

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HOLTVILLE ICE AND COLD STORAGE COM-
PANY, ASSOCIATED FARMERS OF IM-
PERIAL COUNTY and HUGH T. OS-
BORNE,

Respondents.

Transcript of Record
In Two Volumes
VOLUME II
Pages 391 to 876

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Labor Relations Board

FILED

MAY 23 1944

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ARTHUR LEE STANDIFER,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Will you state your full name, please.

A. Arthur Lee Standifer.

Q. Sometimes just Arthur Standifer?

A. Yes.

Q. What is your address, where do you live?

A. 448 Vine.

Q. Vine Street? A. In El Centro, yes.

Q. Were you ever employed by Holtville Ice & Cold Storage Company? A. Yes.

Q. When were you first employed by that company? A. It was around January 1st of '36.

Q. '36? A. Yes.

Q. And how long did your employment continue with that [471] company?

A. I think it was the first of October in '41.

Q. What was the job that you first performed for the company when you were first hired?

A. Storeroom.

Q. How long did you continue in the storeroom, approximately, if you can't remember exactly?

A. Somewhere around two years.

Q. Then what did you do?

A. Run the crane, pulling ice.

Q. Is that that machine that runs back and forth over the cans of ice? A. Yes, can puller.

Q. How long did you operate that?

(Testimony of Arthur Lee Standifer.)

A. Approximately two years, somewhere around there.

Q. Then what did you do?

A. Went on as relief engineer.

Q. How long were you a relief engineer?

A. Up until I was laid off, somewhere around a year, I think.

Q. What were your duties as a relief engineer?

A. To see after the engines and compressors.

Q. Is that what you were doing when your employment terminated? A. Yes.

Q. Did you have occasion to make application for membership in a labor organization while you were employed by the company? [472]

A. You mean with the A. F. of L.?

Q. Yes; that is a labor organization.

A. Yes.

Q. And when was that?

Mr. Whitelaw: I would like to object if I may, Mr. Examiner, to his form of the question, when he was employed by the company. There is no showing whether he was employed or not, he hasn't testified he was employed.

Trial Examiner Mouritsen: I don't think there is any question about it. In other words, the Respondent says he worked up until October 3, 1941.

Mr. Whitelaw: I withdraw my objection.

The Witness: Around September 26th, somewhere around there.

Q. (By Mr. Ryan): 1941? A. 1941.

(Testimony of Arthur Lee Standifer.)

Q. Where were you when you made application for membership in the Union?

A. The Union Hall up here.

Q. In El Centro? A. Yes.

Q. The A. F. of L. Labor Temple?

A. Yes, sir.

Q. Did you sign any documents when you made application for membership in the Union? [473]

A. Well, we just made out the forms there.

Q. Did you fill out a form?

A. Filled out the application.

Q. What organization was it that you filled out a blank for, what union was it?

A. Oh, it was the A. F. of L. Teamsters.

Q. Then did you make any payment of any money on that to the Union?

Trial Examiner Mouritsen: That has already been answered.

Mr. Ryan: All right.

Q. (By Mr. Ryan): After you had made application for membership in the Union, did you continue to work for the company?

A. Yes, a few days.

Q. How long thereafter?

A. Maybe a week, I wouldn't say for sure.

Q. And what occurred then?

A. Just laid me off.

Q. Who laid you off? A. Pete Pool.

Q. Peet Pool? A. Yes.

Q. Did he say anything to you?

(Testimony of Arthur Lee Standifer.)

A. No, just said he was sorry, he would have to lay me off.

Q. What were you doing at that particular time?

A. I think I was painting at the time. [474]

Q. What were you painting?

A. Just painting inside the engine room.

Q. And did he say anything else?

A. I asked him for how long, and he said he didn't know.

Q. Was that all the conversation?

A. I think it was.

Q. After that, did you have any occasion to meet Pete Pool? A. Oh, I met him in town.

Q. About how long after that lay-off did you meet Pete Pool in town?

A. It was a week or so.

Q. Where did you meet him?

A. One of the pool halls.

Q. What town? A. Holtville.

Q. Did you have a conversation with him on that occasion? A. Yes, I was talking with him.

Trial Examiner Mouritsen: Did you talk with him either about the union or going back to work?

The Witness: Oh, I asked him if he knew when we were going to start up, and he said he didn't.

Q. (By Mr. Ryan): Was that all that was said in that regard?

A. Yes, that is all I asked him about.

Q. Did you see him again thereafter on any occasion to talk to? [475]

(Testimony of Arthur Lee Standifer.)

A. I seen him several times in town, run across him.

Q. About how long was it after this meeting in the pool hall you next saw him?

A. I don't know, a week or so.

Q. Where did you see him on that occasion?

A. On the street, I think it was.

Q. Was this in Holtville or here?

A. Holtville.

Q. Did you say anything to him then about going to work or joining the union?

A. No, I didn't say anything then.

Q. Did you talk to him at any time after that?

A. Oh, we both lived there and I was in town every day, and I was always running across him and saying something.

Q. Did you talk to him any more after that about going back to work? A. No, I didn't.

Q. Did Mr. Pool ever come to you after that and tell you to come back to work, or offer you back your job? A. No.

Q. Did you see any other representative of the company during that period?

A. Oh, I talked to Herman a time or two when I would be down at the plant.

Q. When did you talk to Herman? That is Herman Smith, is it? [476] A. Yes.

Q. When did you talk to him? Can't you give us an idea about this? We don't expect you to remember an exact date but approximately the time the things occurred.

(Testimony of Arthur Lee Standifer.)

A. Around the 15th of October, I guess, somewhere around there.

Q. Where was it you talked to Mr. Smith on that occasion, Herman Smith?

A. There at the plant.

Q. Was anyone present while you were talking with him? A. No, I don't think so.

Q. Will you tell us what he said to you and what you said to him on that occasion, if anything, in substance, if you can't remember the exact words?

A. I didn't ask him about going back to work because Pete was the one we see for that.

Q. Did you, at any time, ever ask Mr. Smith about going back to work?

A. No, I asked him if they would make me out a recommendation if I didn't go back to work, for some other outfit. He said they would, they didn't hold anything "agin" the boys.

Trial Examiner Mouritsen: Did you ever apply to Mr. Willard or anyone else?

The Witness: No.

Mr. Ryan: I have no further questions. [477]

Cross Examination

Q. (By Mr. Smith): Mr. Standifer, you said you were doing some painting. After they quit manufacturing ice in June of 1941, was the painting work the last work you did up until October 1st?

A. The last work?

Q. Yes. Was that the last work——

(Testimony of Arthur Lee Standifer.)

A. That was what I was doing at the time I got laid off.

Q. What were you painting?

A. The inside of the engine room.

Q. Did you finish it? A. No.

Q. Who else was working on it?

Trial Examiner Mouritsen: Did you hear the question? Who else was doing the painting?

The Witness: There was no one but me.

Q. (By Mr. Smith): You were painting the tank, the new tank?

A. No, I was painting on the walls.

Q. You say you did not finish it? A. No.

Q. How much was unfinished?

A. I don't know, maybe start in painting—I couldn't say how much was unfinished.

Q. Didn't you paint the new tank? [478]

A. Well, I went back and worked a few days for the York Company out of Long Beach; I was painting on the new tank then.

Q. You finished it then, didn't you?

A. No.

Q. Well now, in previous years you were generally laid off for some time after they quit manufacturing ice in the summer time until they started up in the fall?

A. Sometimes we were and sometimes we weren't, some years we would only get our two weeks vacation and that would be all the time we were off.

(Testimony of Arthur Lee Standifer.)

Q. Some years you had as much as two or three months off, didn't you?

A. As long as I was down there, low storeroom man, I was.

Q. I believe you said you were a part time operator or at least operator of one of the Diesel engines before you quit? A. What?

Q. Did you work as one of the operators before you quit? A. Yes.

Mr. Ryan: I object to the use of the word "quit."

Q. (By Mr. Smith): Before your employment ceased there, how long did you work as an operator?

A. I would say somewhere around a year.

Q. You knew, didn't you, Mr. Standifer, that when they changed from Diesel power to electric power there would not [479] be room for all the men when they started up in the fall?

Mr. Petersen: To which we object, it calls for a conclusion of the witness.

Mr. Smith: I think it is part of the facts.

Trial Examiner Mouritsen: I would be interested if anybody told him that.

Q. (By Mr. Smith): Did you men discuss that point among yourselves?

A. Yes, we figured we would be put back from engineer to pulling ice and they would go back in the storeroom.

Q. You knew someone would have to be laid off?

A. Yes.

Mr. Ryan: I object to that.

(Testimony of Arthur Lee Standifer.)

Mr. Petersen: I object, too.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): What made you figure that the operators would go to pulling cans, and the can pullers would be in the storeroom? Did you fellows just figure that out yourselves or did anyone tell you that? A. I wasn't told.

Q. You mean you just figured that was probably what would happen?

A. By being the oldest men, yes.

Q. You never did really apply to be reinstated after the plant started in the fall of '41, did you? [480]

A. It hadn't been a custom in the last years to go and ask for a job back, they usually notified us when they were going to start up.

Q. You never did actually go and ask for work, did you?

A. Nothing more than just ask Pete if he knew when they were going to start up. [481]

Q. (By Trial Examiner Mouritsen): Mr. Standifer, after you signed this application for membership in the Teamsters, did Mr. Pool or Mr. Smith or Mr. Willard ever say anything to you about your having done that? A. No. [486]

LESTER CLARENCE HART

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Will you state your full name, Mr. Hart?

A. Lester Clarence Hart.

Q. Is that sometimes spelled Lester C. Hart?

A. Yes, that is the way I usually sign it.

Q. Where do you live, Mr. Hart?

A. I live at 881 Orange, El Centro.

Q. Mr. Hart, were you ever employed by Holtville Ice & Cold Storage Company? A. Yes.

Q. When were you first employed by that company? A. Oh, in 1926.

Q. How long did your employment continue?

A. Well, it continued until about—around the 1st of October, 1941.

Q. And what was your job when you first went to work for [487] the company?

A. When I first went to work I was working on ice cans and then—sometime later I started pulling ice.

Q. About how long were you on the ice cans as you explained it?

A. About two weeks, I guess.

Q. What were your duties in that regard?

A. Just straightening out the sides of the cans, pounding out the sides.

Q. Then you became an ice puller. How long did you stay on that job?

(Testimony of Lester Clarence Hart.)

A. As near as I can recollect about two and a half or three years.

Q. What did you do after that, Mr. Hart?

A. Then I became an operating engineer.

Q. How long did you continue as an operating engineer?

A. Oh, about two or three more years, I guess, two or two and a half.

Q. Then what did you do?

A. Then I was given the job as plant mechanic.

Q. How long did that continue?

A. That continued until the time I was laid off.

Q. In 1941, October, 1941? A. Yes.

Q. What were your duties as plant mechanic?

[488]

A. Well, all kinds of general maintenance work, making ice chutes and welding any broken machinery, pouring bearings and making shafts and overhauling pumps and motors, Diesel engines, making bearings for Diesel engines, and I did some work on sheds.

Q. What sheds?

A. Packing sheds where they shipped the vegetables.

Q. Did you do that for the Holtville Ice & Cold Storage Company? A. Yes.

Q. What work did you do in the sheds?

A. Repaired the chains—conveyor chains and put teeth in the ice crushers, and take them out and repair certain broken parts of them.

Q. Who paid you for that type of work when you were over in the sheds working?

(Testimony of Lester Clarence Hart.)

A. I drew all my salary from the ice plant.

Q. Mr. Hart, while you were employed by the Holtville Ice & Cold Storage Company did you have occasion to join a union?

Mr. Whitelaw: To which we object as calling for an opinion and conclusion of the witness.

Q. (By Mr. Ryan): Labor organization?

Mr. Smith: Object to the words whether he joined one or not.

Trial Examiner Mouritsen: Sustained. [489]

Q. (By Mr. Ryan): Did you have occasion to make application for membership in a labor organization? A. Yes.

Q. What labor organization was it?

A. It was the Teamsters organization.

Q. A. F. of L.? A. A. F. of L.

Q. And when was that?

A. Well, that was around the latter part of September.

Q. And where were you when you made application? A. Over here.

Q. For membership in the Teamsters?

A. At the local hall.

Q. In El Centro? A. In El Centro.

Q. Were you here with other employees or by yourself? A. Yes, with others.

Q. How many other employees were with you, if you can recall?

A. As near as I can recall there were 11 of us altogether.

(Testimony of Lester Clarence Hart.)

Q. Can you tell us briefly what happened up in the hall, what you employees did up there?

A. Well, we were—had been talking some about it before and we just wanted to go over there, mainly for the purpose of finding out what kind of an organization it was.

Q. The Teamsters was? [490]

A. Yes, and see what they would offer us, and the initiation fees, and so forth, and we had decided that we would like to ask for a raise and we thought we would go about it in a legitimate manner, according to the Wagner Act and appoint a bargaining agent. We thought after we went there and found out what they were we would appoint them our bargaining agent and somebody made the motion and somebody seconded it and we voted unanimously by a rising vote.

Q. Who voted?

A. The employees of Holtville Ice Company.

Q. The employees who were present?

A. Yes. I can name part of them, I don't know whether I can recall all of them or not. There was myself and Herman Pool and Bailey Pool, Henry Miller, Henry Fredenberg, Tom Herring, Pete Drinkard, Perry Blankenship, Herman Fruhn and Arthur Standifer. I don't remember just now whether there was any more or not.

Q. Do you know M. K. Stout?

A. Yes, M. K. Stout was there.

Q. He was there? A. Yes.

(Testimony of Lester Clarence Hart.)

Q. How was this vote taken that you just testified about?

A. It was a standing vote, all in favor of appointing the A. F. of L. as our bargaining agent was supposed to rise, and everybody rose. [491]

Q. You saw that, did you?

A. Yes. I was sitting near the back and I saw the whole bunch.

Q. Then on that same occasion did you have occasion to sign an application blank?

A. Yes, sir.

Q. For the Teamsters?

A. Yes, we—application blanks were passed around and everybody signed them.

Mr. Whitelaw: We object to that last answer as being not responsive. He was asked if he signed an application blank. I ask to have the last portion of the answer stricken out as a conclusion and opinion of this witness, unless he saw each man sign it.

Trial Examiner Mouritsen: I will deny the motion to strike.

I wish you would inquire further into that.

Q. (By Mr. Ryan): Did you see the other individuals sign them?

A. I saw them writing on them and they were turned in and accepted; they must have signed.

Mr. Whitelaw: We ask to have that stricken.

Trial Examiner Mouritsen: I will deny it.

Is that your basis for saying that they all signed them, just what you told us here? [492]

(Testimony of Lester Clarence Hart.)

The Witness: That is one of them, and another one is that I noticed most all of them handed in some money, either full payment or down payment on the initiation.

Q. (By Mr. Ryan): Mr. Hart, after this occasion at the Union Hall, when you were present there, as you have just testified, after that were you working for the company at that time?

A. Yes.

Q. You were? A. Yes.

Q. How long after that did you continue to work for the company, about?

A. Well, I worked two or three days, as near as I can recall, and then I was told to go on my vacation.

Q. Who told you that, Mr. Hart?

A. Mr. Pete Pool.

Q. What did he say in that regard?

A. He just said Mr. Willard said for us boys to go on our vacations; and Herman Pool was standing there close together at the time.

Q. Was anyone else present, any other boys?

A. No, I don't think there was any near enough to overhear that.

Q. Did you understand how long your vacation was to be?

A. It had been understood in other years we would take two [493] weeks, report back for work in two weeks.

Q. Did you proceed to take your vacation of two weeks at that time? A. Yes, sir.

(Testimony of Lester Clarence Hart.)

Q. After two weeks what did you do?

A. I returned and went in and took my time card that was in the rack, my name, and everything on it, and punched in on the clock, and went back and saw Pete and asked him what I was supposed to do. And he said that Mr. Willard told him to lay everybody off. And I says, "How long?" And he said, "Until further notice."

Q. You then went back home again, I presume?

A. Yes.

Q. Then did you thereafter receive any notice from the company to come back to work?

A. No, I never did.

Q. Did you thereafter talk to any representative of the company about going back to work?

A. Well, I saw Pete from time to time.

Q. Pete Pool?

A. Yes, Pete Pool, and asked him when he wanted me to return to work, and he said, "Not yet."

Q. When would that be, over what period of time would that be that you contacted Pete or would see him?

A. Oh, I would see him every day nearly, once in awhile, once [494] a week or so I happened—it would happen the time came right, I would ask him.

Q. Had the plant started up when you would ask Pete?

A. No, they were still doing repair work.

Q. Would his answer be the same on each occasion?

(Testimony of Lester Clarence Hart.)

A. Yes, he said he didn't know, said, "I haven't got any orders yet."

Q. Did you see anyone else, other than Pete Pool?

A. No,—you mean—about work, you mean?

Q. Yes. A. No.

Q. Were you still in that vicinity when the plant did actually start up, in the vicinity of the plant, I mean, were you living close by?

A. I am not sure whether I was or not, I went to Los Angeles one trip and I don't know whether the plant started while I was gone or *now*.

Q. After the plant had started, at any time did you go to see? A. No.

Q. Did you talk to Pete at any time after the plant started?

A. Well, yes, I have talked to him several times.

Q. I mean, around the time it was getting started?

A. Yes, I talked to him then, I asked him who was going to be the mechanic down there. He said he guessed he was. [495]

Q. Now, a day or two after you had made application in the labor temple to join the Teamsters Union, Mr. Hart, did you meet Pete Pool downtown? A. Yes.

Q. A day or two afterwards? A. Yes.

Q. Where was that?

A. That was in Slick's place.

Q. Where is that, in what town is that?

A. In Holtville.

(Testimony of Lester Clarence Hart.)

Q. Is that a business place?

A. Yes, that is a restaurant.

Q. Did you have a conversation with Mr. Pete Pool on that occasion?

A. Yes, I came in and Pete says, "What did you fellows try to do, blackball me?" I said, "No. Why?" He said, "Why didn't you tell me you were going over to join the Union?" He said, "I would like to have went with you." I said, "I didn't think you needed to join because you are a superintendent." I think the conversation drifted on into something else then. I explained to him why we went over and joined, and so forth.

Q. Was anything said about Mr. Willard in that conversation?

A. Well, I don't remember whether there was then or not.

Q. Was anything said at any time during that period there, [496] when you were talking to Mr. Pete Pool about Mr. Willard, regarding the Union?

A. Well, he told me one——

Mr. Whitelaw: We would like the time and place. The question is very leading and suggestive.

Trial Examiner Mouritsen: Yes.

Mr. Whitelaw: We would like the time and place.

Trial Examiner Mouritsen: Fix the time and place.

Q. (By Mr. Ryan): It calls for a yes or no. Did you? A. Yes.

(Testimony of Lester Clarence Hart.)

Q. Now then, where was this that such a conversation occurred?

A. It was there in the plant.

Q. It was?

A. The next day after we joined.

Q. After you joined the union? A. Yes.

Q. And will you tell us whether or not anyone was present, other than you and Mr. Pool while you were talking? A. I don't think so.

Q. All right. Will you tell us what that conversation was about, what Mr. Pete Pool said and what you said, if anything?

A. I just met Pete there in the engine room, met face to face, and I didn't know just how the Company would take it——

Mr. Whitelaw: We object to——

Q. (By Mr. Ryan): Just tell what was said.

[497]

Mr. Whitelaw: The statement is a voluntary statement. I ask to have it stricken.

Trial Examiner Mouritsen: Yes.

Q. (By Mr. Ryan): Say what you said and what he said, if anything.

A. He said, "Mr. Willard is sure mad about you fellows joining the Union."

Q. Did you say anything?

A. Well, then I just told him why we did.

Q. What did you say about that?

A. I just told him that we wanted to ask for a raise, we wanted to have them represent us.

(Testimony of Lester Clarence Hart.)

Q. Had there been any custom in the past years with respect to your taking a vacation and then coming back to work at the end of the vacation period? Will you explain that, if there was such a custom?

A. I usually took my vacation the last, after the rest of them all went first, because I was busy doing some of the repair work, getting ready to start up in the fall and it was always customary whenever it got time, the superintendent would tell me when to go and I would go and return at the end of the the two weeks period to work.

Q. And would you return upon request, or just how would you happen to return at the end of that two weeks?

A. No, just understood to be back in two weeks —after the [498] two weeks was over, come back to work.

Q. When you went down to the plant at the end of your vacation would you go in and immediately start to work, or first talk to somebody?

A. Go there at the usual time in the morning and go to work.

Q. When you say you would go to work, you would just start to work, how would you know what work to do?

A. I would report to the superintendent first and see what he had lined up for me to do.

Q. He would tell you what needed to be done, would he? A. Yes.

Mr. Ryan: No further questions.

(Testimony of Lester Clarence Hart.)

Cross Examination

Q. (By Mr. Smith): Mr. Hart, the last ten years or so you were at the plant your work was exclusively that of a repair mechanic, was it not?

A. No, not altogether.

Q. Well, was the majority of your work as a repair mechanic?

A. No, I would say about 50-50.

Q. What other work was there you did?

A. Well, I built a lot of ice chutes for one thing, and made crusher teeth, for ice machine crushers over in the sheds. [499]

Q. That was mechanical work, wasn't it?

A. Yes.

Q. Your main work was keeping the Diesel equipment in operating order, wasn't it?

A. Well, that didn't require very much of the time.

Q. But you were the one and the only one that did that, were you not?

A. No, not the only one.

Q. You were the head man?

A. Well, the superintendent was in charge of that kind of work, and he put the other men on to taking apart and cleaning them up and putting them back together, and if there was any adjusting to be done, he would do that, or any bearings to be rebored or bushings to be put in, things like that, I did that kind of work.

Q. And to your knowledge there was never anyone employed to take your place, was there, after

(Testimony of Lester Clarence Hart.)

the plant changed over from Diesel power to electric power?

A. There was one man told me he worked down there for two or three days, made some bolts for the carpenter that was working in the store room.

Q. To your knowledge there never has been a steady employee to take your place, has there, since the change-over?

A. No, not to my knowledge.

Q. Didn't Herman Smith tell you, Mr. Hart, some time around [500] October, that there wouldn't be work for you since they had the electric power instead of Diesels?

A. No, sir, he did not.

Q. Didn't he give you the name of a hotel in Yuma where he thought you could get work?

A. Yes, he did that, that was after the plant had started production and I was laid off.

Q. He also gave you the name of another place he thought you could get work, did he not?

A. Not to my knowledge, no.

Q. He did give you the name of a hotel in Yuma who was looking for a mechanical engineer?

A. He told me there was a phone call for me there, they were looking for me.

Trial Examiner Mouritsen: Which one was this, Herman Pool or Pete Pool?

Mr. Smith: Herman Smith.

Q. (By Mr. Smith): Herman Smith, was it?

A. Yes, it was.

(Testimony of Lester Clarence Hart.)

Mr. Petersen: May we have the time and occasion fixed on that?

The Witness: I was down to the plant, he handed me a little slip, he wrote down the phone call, the address of the hotel in Yuma and said they wanted me to call them.

Q. (By Mr. Smith): Do you know when that was? [501]

A. Well, that was along the latter part of November, I believe.

Q. You went over to see that hotel, did you?

A. No, no, I called them on the phone.

Q. Well, wasn't there talk among you men, Mr. Hart, during the summer of 1941 when the plant was installing the electric power, that there would not be work for some of you fellows that had been working there under the Diesel power?

A. Not—it didn't include me. There was understood among the plant there that the operating engineers would be ice pullers, as well as engineers, because the electric motors wouldn't require all their time, like the Diesel engines would; as far as my work was concerned, I didn't hear anything about that.

Q. You didn't ask anyone and no one told you, is that it? A. Yes.

Q. You don't know, of your own knowledge that anyone at the Holtville Ice plant has been employed to do the work you formerly did, except this one occasion you speak of?

Mr. Petersen: To which we are going to object,

(Testimony of Lester Clarence Hart.)

he was not down at the Holtville Ice Company and can't speak on it.

Trial Examiner Mouritsen: I think it is repetitious.

Mr. Smith: I think he answered that.

Q. (By Mr. Smith): The only time you mentioned union to Pete Pool was when he told you—when he said to you, “Why [502] didn't you take me, I would like to join too?” Is that correct, Mr. Hart?

A. Yes, that was the first that had been mentioned.

Q. He didn't criticize you in any way for having signed up? A. No.

Q. Did he tell you he thought it was a good thing?

A. No, he didn't say whether he thought it was a good thing or not.

Q. You never heard him say anything against it? A. No.

Q. When was it that Pete Pool said to you that “Mr. Willard is mad about you fellows joining with the union”?

A. That was the next morning after we came back to the plant, after being over here to the hall.

Q. That would be the 27th of September then, is that right?

A. Yes, as near as I can remember.

Q. Now, Mr. Hart, Mr. Willard wasn't even in Holtville at the time, was he?

(Testimony of Lester Clarence Hart.)

A. He was either there that day or the day before.

Q. Wasn't Mr. Willard away on a vacation himself after they installed the electrical equipment?

Mr. Petersen: To which we are going to object for the reason it calls for a conclusion.

Trial Examiner Mouritsen: I don't think the question is objectionable upon that ground, I don't think the time has [503] been set when this was installed.

Mr. Smith: I will withdraw it.

Q. (By Mr. Smith): Mr. Hart, do you know when Mr. Willard did leave for his vacation and when he returned?

A. No, because when I was laid off and left the installation wasn't completed, the plant wasn't near ready to run.

Q. Do you know whether or not Mr. Willard was there then?

Trial Examiner Mouritsen: When?

Q. (By Mr. Smith): When you were laid off?

Trial Examiner Mouritsen: When he started on his vacation. He was laid off for two weeks.

Q. (By Mr. Smith): When was the last you worked, Mr. Hart?

A. About the last of September. Then I started on my vacation right around the first.

Q. Well, you never worked after the last of September, is that right? A. No.

Q. Did you go to work somewhere else then shortly?

(Testimony of Lester Clarence Hart.)

A. No, not until about the middle of December.

Q. Didn't do anything?

A. I just went to Los Angeles and put my application in several defense plants, looked for work.

Q. Then where did you go to work?

A. I went to work at the Shippers Ice Company.

Q. Where? [504] A. Here in El Centro.

Q. Have you been with them ever since?

A. Yes, sir.

Q. What kind of work do you do there?

A. I am chief engineer and plant mechanic; same kind of work I did over at Holtville.

Q. Isn't it true, Mr. Hart, that practically all the work you had been doing was no longer there after the change-over from Diesel power?

Trial Examiner Mouritsen: How can this man tell us about that?

Mr. Smith: Well, he knows.

Mr. Whitelaw: He is an engineer, he should know.

Trial Examiner Mouritsen: For what it is worth then. How many times did you go back after you were laid off, back to the plant to see how it was operating and what they were doing?

The Witness: I was there two or three times, just dropped in, go by.

Trial Examiner Mouritsen: How long would you stay there on those occasions?

The Witness: Not over 10 or 15 minutes.

Trial Examiner Mouritsen: Would you go

(Testimony of Lester Clarence Hart.)

through the plant and observe the operations when you were there?

The Witness: Yes. [505]

Trial Examiner Mouritsen: Now ask him your question.

Q. (By Mr. Smith): Isn't it a fact then that the greater part of your work had been done away with because of the change-over to electric power?

A. Not at the time I was laid off, it wasn't, because the job there, I was working on that, hadn't even completed.

Q. What job was that?

A. I was building a dump, in the dip tub, to enlarge, double the capacity of the crane to pull ice, and I had to make a larger dump and had to rebuild the whole ice dump.

Trial Examiner Mouritsen: Do you mean that work hadn't been completed at the time you started on your vacation in early October, or that it hadn't been completed when you came back after your vacation and spoke to Mr. Pool?

The Witness: It hadn't been completed when I got back from my vacation.

Q. (By Mr. Smith): There was just a little welding job to be completed, wasn't there?

A. I don't know, quite a bit of machine work and welding, and I had ordered the parts through Herman Smith.

Q. Do you know whether or not Pete finished it up, himself?

A. Well, it was—it was took down to Sam

(Testimony of Lester Clarence Hart.)

Webb's blacksmith shop and he made it and Pete installed it. [506]

Cross Examination

By Mr. Petersen:

Q. What percentage of your repair work was done approximately—was done in the sheds of the vegetable packers to which you have testified, putting in the chains and sprockets?

A. I imagine about 25 per cent, somewheres about.

Q. What percentage of your work was approximately put in on the ice chutes and ice cans?

A. Oh, I don't know, I imagine it would be about 50, 60 per cent of the work was on general repair work that way.

Q. What part of your work was actually done on repairing Diesel engines?

A. Oh, I would say more than ten or twelve per cent at times.

Mr. Petersen: That is all. [508]

Q. (By Trial Examiner Mouritsen): That would make about 85 per cent, around there. What were you doing the rest of the time?

A. Well, one thing I didn't quite—took a lot of my time building some heat exchangers to cool the water, that took quite a lot of time.

Q. Well, would that—

A. That would be Diesel engine work, too, I think.

Q. Would that last type of work you mentioned, would that cease when the Diesel engines were re-

(Testimony of Lester Clarence Hart.)

moved or would that continue under an electric power source?

A. That would cease then, took out, I understand, and sold the heat exchangers.

Q. You don't use heat exchangers under the electric power? A. No.

Trial Examiner Mouritsen: Anything further?

Mr. Smith: I guess that is all.

Cross Examination

Q. (By Mr. Smith): Do you know whether there has been any work done at all on the ice cans or chutes since you left the plant, Mr. Hart?

A. No, I don't, I haven't been around there enough to know.

Mr. Smith: That is all.

Mr. Petersen: One more question. [509]

Cross Examination

By Mr. Petersen:

Q. Has it been a general practice that a certain amount of work had to be done on the ice cans there, continuous operation?

A. Well, as a rule, yes. The cans would get to leaking and weren't fit to make ice in, they would have to be repaired or changed for better cans.

Q. Did you repair those cans generally if they were repairable?

A. Usually, yes, there were quite a number of them. [510]

LE ROY H. DAVIS,

called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Will you state your full name, please, Mr. Davis? A. Le Roy H. Davis.

Q. Where do you live?

A. In Bloomington, California.

Q. Did you ever live in Imperial County?

A. Yes, I did up to nine months ago.

Q. Were you ever employed by Holtville Ice and Cold Storage Company? A. I was.

Q. When were you first employed by that company, and how long did you remain in the employ of the company?

A. I was employed first in February, 1932, up to October, 1941.

Q. In what capacity were you first employed by the company?

A. As a laborer, platform man.

Q. As a laborer? [516]

A. Yes, platform man, I think is what they call it.

Q. How long did you continue on that particular job, approximately?

A. I was temporarily off and on from February, 1932, to about September, 1934.

Q. Then what did you do, Mr. Davis?

A. Well, I was taken into the office then as assistant bookkeeper.

(Testimony of Le Roy H. Davis.)

Q. How long did you continue in that capacity?

A. Well, I was assistant bookkeeper, among other things, from then until I left their employment.

Q. When did you leave their employ?

A. October, 1941.

Q. Did you have any other job while you were assistant bookkeeper?

A. Yes, I was delivery foreman part of the year, had charge of the delivery of vegetable ice.

Q. And how long did you hold that job?

A. I took those duties over in 1935, I believe, early in 1935, about January 1st, 1935.

Q. Now, during your employ for the company was it customary for you to work the entire year or be laid off certain parts of the year?

A. I worked the entire year from the time I was taken into the office in 1934 until I was laid off in 1941. [517]

Q. Did you have occasion to make application for membership in a labor organization at any time during your employ with the company?

A. Well, I—no one ever contacted me about it until I attended a labor meeting over here at the Temple of Labor.

Q. A. F. of L.?

A. I mean no one asked me to join until that time. I had been asked to go to meetings, I attended one meeting over there and then I joined.

Q. When did you make application for membership?

(Testimony of Le Roy H. Davis.)

A. It must have been about September 3rd, I believe—wait a minute, September 3, 1941.

Q. September 3rd, are you sure about that month?

A. Let me think a while about it. That is kind of old for me. Let me think a minute. No, it was October 3rd.

Q. 1941? A. 1941.

Q. What union was that you made application to become a member of?

A. A. F. of L., Teamsters Union.

Q. Who was present at the time you made your application in the Labor Temple?

A. Oh, there was a large attendance that night, there were several employees from the Holtville Ice Company and a number from the Imperial Ice and the Pure Ice and the Fruit [518] and Shippers Ice Company.

Q. Who was present from the Holtville Ice and Cold Storage Company?

A. The men I know, that I saw, were Lester Hart and Henry Fredenburg, Arthur Standifer, Herman Pool, Bailey Pool, Perry Blankenship. There are others, I couldn't name them. I remember seeing those there. Some of them came over in my car, some of them came in other cars.

Q. Did they make application at the same time you did?

A. Some of them had joined up before, some of them signed that night. I couldn't say from memory who it was joined that night.

(Testimony of Le Roy H. Davis.)

Mr. Whitelaw: May we object to the conclusion of this witness, that they joined up?

Trial Examiner Mouritsen: Yes.

Q. (By Mr. Ryan): Shortly prior to this occasion when you were at the Labor Temple and made your application for membership in the Teamsters Union, had you had a conversation with Mr. Herman Smith?

A. Right after the first meeting, when those—the first group joined I did.

Q. When was that, about?

A. The following morning, I believe.

Mr. Whitelaw: Just a minute, please. For the purpose of the record we ask to have the conclusion of the witness [519] stricken, as hearsay.

Mr. Smith: I will join in the objection.

Trial Examiner Mouritsen: I will take it to mean when they signed these applications, rather than when they joined.

Q. (By Mr. Ryan): It would be around the 27th of September that you had this conversation with Mr. Smith?

A. It would be a week previous.

Mr. Whitelaw: We are going to object to the leading and suggestive questions by Mr. Ryan.

Trial Examiner Mouritsen: I don't see any harm in fixing the time like that. September 26th is pretty generally accepted as the time they did it. He said it was the following morning.

Mr. Whitelaw: I didn't hear him say it was the following morning.

(Testimony of Le Roy H. Davis.)

Q. (By Mr. Ryan): Mr. Davis, where were you on that occasion when you had the conversation with Mr. Herman Smith? A. In the office.

Q. Of the Ice Company?

A. Of the Ice Company.

Q. Was anyone present when you talked to him?

A. Jack Garber was present.

Q. Who was he?

A. He was—another assistant bookkeeper.

Q. For the company? [520]

A. For the company.

Q. Will you tell us what you said and what Mr. Herman Smith said on that occasion?

A. It wasn't a very long conversation. He asked me what I knew about it, about the boys joining the union the night before, and I told him I didn't know anything about it, that they had told me there was a meeting taking place the night before and they had asked me to go, but I had a previous engagement, so I didn't go. I told him I heard some of them had joined, I didn't know how many or who they were at that time.

Q. Now, was that about all that conversation, Mr. Davis?

A. Well, that is about all. I think that is all that I remember at this time.

Q. Then after you had made application for membership in the Teamsters Union, did you have a conversation at any time thereafter with Mr. Hugh Osborne? A. Yes.

(Testimony of Le Roy H. Davis.)

Q. And when did you have such a conversation?

A. It was just a few days after I had signed up, Mr. Osborne came to my house one evening.

Q. Signed up?

A. Signed up with the union. Mr. Osborne came to my house about 5 o'clock one evening and my wife answered the door and asked him to come in, he said he was just coming for a [521] few minutes, he would prefer to talk on the porch. She called me and I went out there and talked a while about this subject, about joining the union.

Q. Tell what Osborne said to you and what you said to him on that occasion.

A. I couldn't give you a very good account of it at this late date. He asked what the trouble was down at the plant and I told him as near as I could what it was, what I heard the boys say.

Q. What did you say?

A. They were dissatisfied on account of the wages. They had heard early that spring that wages had been raised all over the Valley at the other ice plants.

Q. You say they had heard. Whom did you have reference to?

A. These boys who had joined the union. The boys that joined the union. He asked me about the trouble and I told him. The boys had, from time to time, asked Mr. Smith for raises in their wages to compare favorably with wages in the other plants; they didn't get any results so they heard

(Testimony of Le Roy H. Davis.)

about this meeting and they went over there. And another thing that complicated things——

Q. Went over where?

A. To the first meeting that took place at the Temple of Labor. Another thing that complicated matters——

Q. Is that what you told Osborne? [522]

A. That is what I told Osborne. Another thing that complicated matters at this same time was that the Holtville Ice Company was doing a lot of maintenance work and enlarging the plant, changing over from electric—from Diesel power to electric power, and to do this work they imported quite a lot of union labor from L. A.; from outside of the county, anyway. And these union men, of course, were getting the union scale of wages.

Mr. Whitelaw: Just a minute. Is this what you told Mr. Osborne, all of this?

The Witness: Yes.

Mr. Whitelaw: You told him all this?

The Witness: Yes.

Mr. Whitelaw: All right. Go ahead.

The Witness: These union men about getting the union scale of wages, pay, while the men working at the plant, some of them doing the same kind of work and getting the plant wages, which were approximately 50 per cent of the union scale. And, of course, these union men, while they were down there they had been talking up the union idea to these men and they naturally fell for it, considering the difference in the scale of pay. And they

(Testimony of Le Roy H. Davis.)

were willing to attend this meeting that night. But from what I gathered, what little I talked to them the night before this meeting took place no one had any intention of joining the night they [523] went over there. They listened to the talks on union, according to the way it was told to them, and they figured it would be a good idea to join, and they felt they had a right to join, so they did. A number of them did, not all of them.

Q. This is what you were still telling Mr. Osborne?

A. Yes, I told him that the plant men had always felt loyal to the plant, some of them had worked for the plant from the time the plant was built, and others that had come in later felt the same way about it. And they had for years and years considered it one of the best places to work in the Valley. I told Mr. Osborne this. These were some of the things I actually told him.

Q. What did he say to you then?

A. That was about all I told him. And he told me that—well, I did add, I did think there wasn't enough contact between the heads of the firm and the employees, too much of the contact work was done by men that had to go higher to get their authority for any action that was taken. He agreed with me there, he said he thought that that was the way it was, too.

Q. What did he say to you besides that, anything?

(Testimony of Le Roy H. Davis.)

A. Well, he went on from there and he suggested the idea of a company union.

Q. What did he say in that regard? [524]

A. He wanted to know why I didn't try to organize a company union. And I told him that I didn't think it would be any ahead there, we wouldn't have any power to better our station if we did form a company union. We would be just the same group of employees asking for the same thing, but with no power back of us to back it up. Then I told—then he told me that the Associated Farmers were against organized labor, because the organized labor meant closed shop, and closed shop was unAmerican, and the Associated Farmers were against closed shop because it was unAmerican. Then he told me that—in the first place, he said that Mr. Willard hadn't talked to him about this case, with him, personally, but then he told me that Mr. Willard would close the plant down before he would deal with the A. F. of L.

Q. Did he say anything more about this idea of forming—

A. No, I told him that I had signed with the union and that I would stay with the rest of the bunch until they agreed, the majority of them agreed to withdraw or abandon any idea of joining the union.

Q. Then thereafter, did you have a conversation with Herman Smith again after this meeting with Mr. Osborne that you had at your home?

A. The only subsequent conversation I had with

(Testimony of Le Roy H. Davis.)

Mr. Smith was when he called me down to the office to tell me my [525] services would no longer be required.

Q. A few days after your conversation with Mr. Osborne, at your home, didn't you have a conversation with Herman Smith?

A. Yes, when he called me to the office to tell me my services would no longer be required. I don't think I talked to him after that, until that time.

Trial Examiner Mouritsen: Let's lay this aside and you testify without its aid.

The Witness: What is it?

Trial Examiner Mouritsen: Let's lay this to one side.

The Witness: All right.

Mr. Ryan: I don't think the witness has referred to it yet, I want the record to so show.

Q. (By Mr. Ryan): Did you have a conversation in this period you are talking about with Mr. Herman Smith in which the name of attorney Mr. Whitelaw came up?

A. I will take that back, that slipped my mind. Yes, one day after that he asked me——

Q. One day after——

A. After this conversation with Mr. Osborne, I was working in the office one afternoon there, and Mr. Smith told me that Mr. Whitelaw had called him up from El Centro and that he would like to have me come over and see him in his office; in Mr. Whitelaw's office. [526]

(Testimony of Le Roy H. Davis.)

Q. Did Mr. Smith explain to you what Mr. Whitelaw wanted to see you about?

A. No, he didn't. He just—I guess what he wanted to see me about, but Mr. Smith didn't tell me what he wanted to see me about.

Q. What time of day was this?

A. About 2:00 o'clock in the afternoon.

Q. What was your regular working shift?

A. I worked from about 7:00 in the morning until 3:00 or 4:00 in the afternoon.

Q. And what did you do after Mr. Smith had given you this information?

A. He gave me permission to go over there so I took the company car and drove over to Mr. Whitelaw's office.

Q. About what time did you arrive at Mr. Whitelaw's office?

A. It was about 2:30; I went over right away.

Q. Was that over here in El Centro?

A. Yes, I went over to Mr. Whitelaw's office and Mr. Whitelaw was out. I waited in his office from 2:30 until about 15 minutes to 5:00 and Mr. Whitelaw didn't show up at any time during that time. The girls in the office said he would be back any time, but they didn't know just exactly when. I waited until about a quarter to 5:00 and then I left without having seen Mr. Whitelaw.

Q. Is that Mr. R. B. Whitelaw, the attorney in this case? [527]

A. I believe it was, I hadn't ever met the gentleman so I couldn't say.

(Testimony of Le Roy H. Davis.)

Q. Where did you go to go to his office, what building?

A. In the, I believe it is the Rehkopf Building.

Q. Here in El Centro? A. In El Centro.

Q. Did you receive full pay for that afternoon's work?

A. There was no deduction made from my monthly salary.

Q. At any time after this occasion when you went up to Mr. Whitelaw's office, did you have any further conversation with Mr. Herman Smith?

A. No, that is the last conversation until he called me down the Sunday morning I was dismissed.

Q. When about was that?

A. I did tell them when I came back I hadn't seen Mr. Whitelaw; of course, I reported that to him.

Q. When you came back from Mr. Whitelaw's office? A. Yes, I reported that.

Q. Did Mr. Smith say anything then?

A. No.

Q. Did you continue to work for some time after that?

A. Yes, I worked for a short time after that. At this time I can't say just exactly how many days; it was just a matter of days after that.

Q. Then you say you were called down on a Sunday to the [528] office?

A. Sunday morning, yes.

Q. About when would you fix the date of that?

(Testimony of Le Roy H. Davis.)

A. Well, I remember, I am quite positive it was October 16th.

Q. Of 1941? A. 1941.

Q. It was on a Sunday morning, you are sure of that? A. Sunday morning, yes.

Q. How were you called down? Will you explain how you got there?

A. He sent Jack Garber up after me.

Q. Was it your custom to work on Sundays?

A. No, it wasn't; at that time of year I didn't work on Sunday, not very often.

Q. Did Jack Garber come to your home to get you? A. Yes, he came to my home for me.

Q. Then did you go down to the plant?

A. Yes, I went down immediately.

Q. And then did you see Mr. Smith?

A. Yes, he was in the office; I saw him.

Q. Was anyone present while you talked to him?

A. Garber was in the office; he was at another desk in the back of the room, typing.

Q. Will you tell us what Mr. Smith said to you on that [529] occasion?

Mr. Whitelaw? Just a minute. To which we object, it has already been asked and answered several times. He refreshed his recollection and got entirely two different versions after that.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

Q. (By Mr. Ryan): Will you tell us what was said, what Mr. Smith said?

(Testimony of Le Roy H. Davis.)

A. He told me in a roundabout way that there was no longer work for me to do there at that time of the year, that business had fallen off so much there wasn't any necessity for the three of us to be working there and that my work had been very satisfactory all the time I had been there, that I never—during the time I was in the—supervising the delivery of ice it had been delivered far more economically than it ever had been before. If I wanted to stick around there I could have my job about the first of the year, but he wouldn't guarantee I would have more than six or seven months of work a year from there on. He offered to give me a recommendation or do anything he could to get me a job somewhere else. He said he didn't think I would want to stick around just for the part time work they would be able to offer me from then on, he would advise me to get work somewhere else if I could. [530]

Q. Up to this time, did you say you had been working the year round?

A. I had been, yes, sir, the year round from the time I came into the office in 1935 until I was laid off in October, 1941, I worked continuously, except for vacation.

Q. Twelve months a year?

A. Twelve months a year, except for vacations.

Q. How long were vacations?

A. Two weeks usually. A week or two weeks, one week with pay and one week without pay usually.

(Testimony of Le Roy H. Davis.)

Q. This Jack Garber that worked in the office, what were his duties?

A. He was platform salesman, delivered ice to the public that came to the platform and he assisted with some of the book work, too.

Q. How long had he been working for the company?

A. He started that spring, I couldn't say about the month, but he started that spring or summer.

Q. Spring or summer of 1941? A. 1941.

Q. Do you know whether or not he continued to work?

A. He was working there after I left, I know I saw him out on the platform at times after I left. And I saw him once in the office, doing some office work after I left there.

Trial Examiner Mouritsen: Had he worked there as [531] long as you?

The Witness: Oh, no, he just worked there a month or two—a few months before I was laid off and I worked there from—started as a part time laborer in 1932 up to 1941. I was there nine years.

[532]

Cross Examination

Q. Now, Roy, going to the morning that Herman called you down, one Sunday morning, did he tell you that he had meant to speak to you Saturday, but hadn't had an opportunity?

A. I believe he did say something like that, it slipped my mind until you called my attention to it. I do recall that now, that you remind me.

(Testimony of Le Roy H. Davis.)

Q. Isn't it true that he said, when he laid you off, that they wouldn't have anything to do on the delivery platform until the coming lettuce season, until the selling season, that in substance?

A. Yes.

Q. Did you come back to work when the season started?

A. Yes, that is what I said.

Q. Yes. Do you remember telling him then, Roy, for the first time you suspected something like this would happen, that you had made application for the union?

A. I beg your pardon?

Q. Do you remember telling Herman Smith on that day you thought something like this would happen, because you made application to a union?

[534]

A. Yes, I did.

Q. All right. Do you remember that he replied and said, "Roy, that is the first I knew you had made application to a union."

A. Yes, he did tell me that.

Q. And you never had told Herman Smith or Mr. Willard that you had made application to a union, did you?

A. No, I hadn't told them.

Q. So far as you know, he didn't know it prior to that?

A. As far as I could swear.

Mr. Petersen: To which we object on the ground that the witness has already testified concerning his meetings with Mr. Osborne and——

Trial Examiner Mouritsen: I will overrule the objection.

(Testimony of Le Roy H. Davis.)

Q. (By Mr. Smith): Roy, after the carrot season finished in the summer of 1941, while all that work was going on, changing from the Diesel engines to the electric motors, there was more office work than usual in the summer time, was there not?

A. Well, it was a different kind of office work. There wasn't any more of it, though.

Q. Didn't you and Herman have to write letters regarding supplies and priorities, and things like that?

A. Yes, we did. [535]

Q. And that was in addition to work that would not have had to be done had the plant not been going through this construction work?

A. Yes, there was some additional correspondence about that.

Q. Had it not been for that additional construction work there was very little office work, book work, to do in September and along in there?

A. It was rather slack about that time, yes, very slack.

Q. And the company wasn't selling any vegetable ice at all, was it?

A. No, not at that time of year.

Q. The clear ice business was practically nil, wasn't it?

A. That is right.

Q. Isn't it true, Roy, that the clear ice business had been dwindling consistently and steadily for several years prior to that?

A. Yes.

Q. Your work, during the vegetable shipping season, was as foreman of the delivery to the vegetable sheds, was it not?

(Testimony of Le Roy H. Davis.)

A. That was part of my work, yes.

Q. You attended to all of that in addition to helping him in the office?

A. That is right. [536]

Q. And you had an office or desk space of your own out on the platform? A. Yes.

Q. And a telephone out there?

A. That is right.

Q. Where you took orders from the sheds?

A. And did my book work out there at the same time.

Q. Yes. And do you know whether anyone was put on to take your place until the coming lettuce season in December of 1941?

A. I don't know what happened after I left, except from hearsay.

Q. I see.

A. I saw Jack Garber around there working on the platform, and I saw him working in the office, whether he did my work or not I couldn't say.

Q. Was there any delivering at all going on at the time you were laid off?

A. They were selling some clear ice, yes.

Q. Off the platform?

A. Off the platform, and through the trucks, too. May I ask if the statement about——

Trial Examiner Mouritsen: What do you want?

Q. (By Mr. Smith): Did you want to say something? Go ahead, I will wait until you are through. [537]

A. The hours I worked during the off season

(Testimony of Le Roy H. Davis.)

there and the hours I worked during the vegetable season.

Trial Examiner Mouritsen: Tell us what the situation is.

The Witness: During the vegetable season I came to work whenever it was necessary, whenever the sheds started up, and I worked until the sheds were through at night. And that involved a lot of hours, sometimes, and the understanding was, when I took the job at the monthly salary, at no overtime, I would be allowed to make up for some of the long hours I put in during the vegetable season by working shorter hours during the slack season.

Q. And you did, I suppose, work shorter hours during the slack season?

A. I put in my 40 hours a week, just the same, there was—sometimes there wasn't much to do, I will admit, but I put in my 40 hours a week.

Q. What did you have to do with the delivering of the clear ice at the time you were laid off?

A. There were times when the platform man wasn't around, I would sell ice off the platform, times when the platform man wasn't on duty, days off, I would come down and check the trucks out in the morning.

Q. That didn't take a very high percentage of your time? A. No. [538]

Q. Your duties concerned with clear ice?

A. It didn't take so very much time, except you had to be there, was all.

Mr. Smith: I think that is all.

(Testimony of Le Roy H. Davis.)

Cross Examination

By Mr. Yeager:

Q. Referring to this conversation you had with Mr. Osborne, did Mr. Osborne tell you at that conversation why he was coming to see you or at whose suggestion he was seeing you?

A. No, he—the impression he gave me, he was coming just on his own responsibility because he wanted to keep organized labor out of the Valley.

Q. Did he mention to you having talked with some of the other employees of the Holtville Ice?

A. He said he had talked to others, yes.

Q. Did he mention who he had talked to?

A. He had talked—before he came to me he had talked to Herman Pool and to Tom Herring, I am not quite positive about Tom Herring, but I know he talked to Herman Pool before he came to me.

Q. He told you that?

A. Yes, he told me that.

Q. Didn't he tell you Mr. Herring suggested he see you?

A. He did, that is right, I remember now that you remind me.

Q. I think you testified on direct examination that he [539] also told you he hadn't talked to Mr. Willard about this. A. That is what he told me, yes.

Q. Had you heard the conversation around the sheds about an employees union before Mr. Osborne came and mentioned it to you?

A. Oh, union, there had been union talk for a

(Testimony of Le Roy H. Davis.)

year or two before and it was mentioned in a general way. There was no specific plans made for a company union, no.

Q. You heard some of the employees discussing having an employees union there previously, though?

A. It had been talked about, yes; not as applied to the Holtville ice plant, no. There has been talk about it, what advantage there might be in it, it had been talked over in spare time during the vegetable ice season when there was a few minutes to spare there would be some talk about organized labor and the advantage of a company union. To the best of my remembrance, I don't remember anyone suggesting forming a company union of the Holtville ice plant. Is that what you meant?

Q. Yes. Thank you.

Mr. Yeager: That is all.

Cross Examination

Q. (By Mr. Whitelaw): Now, Mr. Davis, when you went over to the Union Hall to discuss this matter with some of the union men, do you know with whom you discussed it, can you [540] name any of the men with whom you talked?

A. No, that would be guesswork, it was discussed at times when I was—didn't have time to talk or sometimes when I wasn't very busy and I would take part in the conversation. I don't remember any one particular man.

Q. Did you hear said by any union organizer at that time, to yourself, or in your presence, to any

(Testimony of Le Roy H. Davis.)

other men, that particularly men known as the operators, the Diesel engineers, chances were they were going to be let off, if they joined the union they would get their back pay from their job? Did you hear any conversation such as that, in substance, probably not the same words?

A. Just in substance. From any union organizer?

Q. Yes. A. No, I don't recall any.

Q. Did you hear it from any of the union men in there?

A. No, I was in the office and it all came to me second-hand, anything like that I heard, rumors like that.

Q. You heard about what I said in substance?

A. I heard it, in substance, but not from any union organizer.

Q. From other men? A. From other men.

Q. From the Holtville Ice employees?

A. Yes. [541]

Q. You heard that from some of the operators, such as Mr. Stout?

A. He could have been one, yes, it was different ones. I wouldn't want to state specifically any one man had told me that.

Mr. Whitelaw: That is all.

Redirect Examination

By Mr. Ryan:

Q. Mr. Davis, while you were working for the company, do you know what the status of these delivery men were with respect to the handling of

(Testimony of Le Roy H. Davis.)

that clear ice after the end of the regular vegetable season? How they handled that ice, and how——

A. Yes.

Mr. Whitelaw: To which we object. The Examiner already has ruled that matter is incompetent, irrelevant and immaterial. The same thing was brought up, I think, by Mr. Petersen, and the Examiner ruled that it didn't make any difference how it was handled.

Mr. Ryan: I am interested in something else, than what Mr. Petersen went into, I think.

Q. (By Mr. Ryan): Did you take care of any book work on that matter, on those employees engaged in that particular type of work?

A. Yes, I handled that, I handled the sales slips, I made up their—the summary of their reports they turned in; [542] made up the reports from them when they checked in. I also made up the reports and collected the tax, the Social Security and Unemployment Tax from them at the end of each quarter when we made our quarterly Social Security and Unemployment Tax report to the Government.

Q. Was any unemployment tax paid on those men by the company? A. Yes.

Q. During the time——

A. Paid by them and collected from them each quarter.

Q. Even while they were distributing this clear ice?

A. Yes, while they were selling clear ice during

(Testimony of Le Roy H. Davis.)

the summer time, I collected the tax from them at the end of each quarter, made up the report from their sales, and then we took into account bad debts they had incurred and expenses and after deducting that I collected the percentage of tax from them, which was, in turn, remitted to the Government.

Q. Do you know whether or not the Government, at any time, took up the status of those particular individuals? A. Yes.

Q. With the Social Security Board?

A. Yes, I did, for the company.

Mr. Whitelaw: Just a minute. To which we object as being wholly incompetent and immaterial to—we are anxious to get through with this case, Mr. Examiner—— [543]

Mr. Smith: If you want to know whether or not they considered these employees, I am satisfied they are, they used company trucks and we are willing to stipulate they are.

Mr. Ryan: I am willing to accept that in lieu of the information. I want to ask him one more question.

Q. (By Mr. Ryan): Was there any set time for you to take your vacation in the summer time over this long period of employment?

A. No, that was a matter of agreement between me and the company, they were very nice about that, they tried to let me take my vacation when I wanted to; and almost always I got my vacation when I wanted to take it.

Mr. Ryan: No further questions.

(Testimony of Le Roy H. Davis.)

Mr. Petersen: Just one.

Recross Examination

By Mr. Petersen): Were you ever paid overtime after the wage and hour law went into effect for work performed in excess of 40 hours a week?

A. No, sir, I wasn't.

Q. (By Trial Examiner Mouritsen): You spoke about some understanding you had with reference to the fact you were to or that you would work long hours, or what was necessary during the busy season and then would be permitted to work shorter hours during the slack season?

A. Not work shorter hours, that I would have work the year [544] round.

Q. With whom did you have such an understanding?

A. When this 40-hour law was passed, before I knew the regulations of it, I suggested to Mr. Smith that it would be better to pay me by the month and then let me take care of the job, whatever hours were necessary to get the job done properly without overtime, and on just a straight monthly salary. I understood Mr. Smith took that up with Mr. Willard and it was satisfactory with him and he related it to me, I should go on a straight monthly salary of \$160 a month with the understanding I would work the hours necessary to protect my job.

Q. Do I understand you first took the matter up with Mr. Smith and then he later reported back

(Testimony of Le Roy H. Davis.)

to you that such an arrangement was satisfactory with Mr. Willard?

A. Yes, that was about the time the 40-hour law was passed and wage schedules were changed in accordance for the other men. I couldn't give you the date on that. I know it was before I knew the regulations or the application of the law very well; I found out more about it later.

Trial Examiner Mouritsen: I haven't anything else.

Recross Examination

Q. (By Mr. Smith): When you had this conversation with Herman Smith, did you just assume that you would have work the year round since you had agreed to stay and take a [545] monthly salary?

A. At this time I can't exactly say the exact words that he told me, that is the impression he gave me.

Q. Can you now state what he said that gave you that impression?

A. I can't give you the exact words, that has been years ago; I can't give you the exact words. I know that was the impression he gave me, I was to work whatever hours were necessary and he knew, too, it was the long hours during the vegetable season. I would be able to let up a little bit during the summer months to make up for that. It seemed like a fair proposition to me and I was willing to accept it under those terms.

Q. There really wasn't enough work to keep

(Testimony of Le Roy H. Davis.)

you busy an hour a day after the construction work was over, was there, Roy?

A. A little bit more than an hour, someone had to be there all the time to take care of the platform, that is the way it was.

Q. How did they handle it after you left, do you know?

A. They had a man to take care of it.

Q. One of the office men?

A. Yes, Jack Garber was kept on to do that same work.

Mr. Smith: I think that is all.

The Witness: I admit there wasn't much work to that, [546] but they had to have someone there to watch the platform unless we closed up, and we never did, customers came when they felt like it, when they wanted ice they wanted to get it. We couldn't tell them when to come, we just had to be there to deliver the ice; someone did.

Mr. Petersen: One more question, Mr. Examiner.

Recross Examination

Q. (By Mr. Petersen): Was your arrangement concerning your working longer hours during the vegetable ice season and shorter hours during the clear ice season made before the wage and hour law went into effect?

A. No, that was afterward when my salary was made a monthly salary, after the wage and hour law had passed and become effective.

Q. Up to that time you had been working on an hourly or weekly salary?

(Testimony of Le Roy H. Davis.)

A. Up to that time the wage scales had been changed several times. At one time I worked on a salary, a monthly salary, and other times I worked by the hour.

Mr. Petersen: That is all.

The Witness: Up to that time, up to the time of the passing and becoming effective of the 40-hour law I had been working by the hour for some time previous.

Recross Examination

Q. (By Mr. Smith): You suggested the salary, yourself? [547]

A. I suggested the monthly salary; I didn't suggest the amount.

Redirect Examination

Q. (By Mr. Ryan): While you were in charge of the platform, which was part of your duty as I understand, did you have any supervisory authority?

A. Yes, it was up to me to see my men were on duty at the proper time and to—I have hired men, it never became necessary to fire men, I suppose I could have if it had been necessary; I laid them off when the time came.

Recross Examination

Q. (By Mr. Petersen): You said you laid them off. Did you lay the men off on your own volition, or did you do that on direct orders from some higher official?

(Testimony of Le Roy H. Davis.)

A. No, I did it when I thought it was necessary, when it [548] was no longer necessary to have a man on duty to do a particular kind of work, I laid them off. It was left to my own discretion to do that.

Q. That was only the platform men, was it?

A. The platform men and the drivers were under my supervision. [549]

F. A. WILLARD,

called as a witness on behalf of respondent Holtville Ice Company, having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Smith): Mr. Willard, you started the Holtville Ice and Cold Storage Company yourself, did you not, as an individual?

A. Yes, sir.

Q. In what year?

A. I think that was in the fall of '25.

Q. After you operated as an individual for a year or two you formed a corporation, did you not?

A. That is correct, yes, sir.

Q. And what office, if any, do you hold in the corporation?

A. I am president and general manager.

Q. And you have held those two offices at all times?

A. Yes, sir.

(Testimony of F. A. Willard.)

Q. What is the business of the Holtville Ice and Cold Storage Company?

A. The manufacture of ice, principally vegetable shipments.

Q. And is your selling season steady the year round or do the sales depend on the harvest of seasonable crops? [556]

A. It depends on the sale of vegetables by seasons, the season will start and finish at different times, different years.

Q. And what vegetables are packed in the vicinity of the Holtville Ice Company for which ice is purchased from the Holtville Ice and Cold Storage Company?

A. Principally lettuce and carrots, although there are some other vegetables.

Q. The lettuce season in the vicinity of Holtville, when is lettuce shipped?

A. The shipments start usually the last of December and will finish any time from the middle of February to early in March.

Q. And is that the only time of the year in which you sell ice for the lettuce industry?

A. Yes, sir.

Q. Now, you said the other vegetable you sold ice for was carrots? A. Yes, sir.

Q. What is the shipping season for carrots in Imperial County?

A. The shipments will start the latter part of December and run through to the latter part of June or early in July.

(Testimony of F. A. Willard.)

Q. So that your selling season then runs from December to early in July each year? [557]

A. That is correct, with one exception, we have a contract with the P. F. E. that we deliver ice on the end of that season.

Q. On the end of the carrot season?

A. Yes.

Mr. Petersen: May we have P. F. E. in the record?

Trial Examiner Mouritsen: Is that Pacific Fruit Express?

The Witness: Yes.

Q. (By Mr. Smith) Approximately how many tons of ice are manufactured and sold annually?

A. Well, that has been a gradual increase, last year it was right at 45,000 tons.

Q. Does the plant sell clear ice now?

A. Yes, sir.

Q. Do you deliver clear ice? A. Yes, sir.

Q. Can you give us a very brief history of the manufacture and sale of clear ice for domestic purposes?

A. Our clear ice season, of course, starts and continues with the hot weather. It will start, oh, it will start the latter part of May, and increase to June, and then it will run steadily through June, July, fall off in August, and fall off in September, and we will stop delivering in October—not stop entirely, but practically through in October.

Q. I see. And how many men do you have de-

(Testimony of F. A. Willard.)

livering clear [558] ice in the peak of the season?

A. We used to have six. Now we have two.

Q. And what has happened to the business?

A. The mechanical refrigerators have taken practically all that business. We used to sell 8000 tons of clear ice and last year we sold 1500.

Trial Examiner Mouritsen: The peak of your clear ice business comes after the peak of your vegetable ice business has passed, is that right?

The Witness: That is correct, yes.

Q. (By Mr. Smith) What has been the custom of the Holtville Ice and Cold Storage Company regarding laying off employees after the completion of the carrot shipping season around July 1st of each year?

A. Well, I explaimed that once before. It had been the practice of the company, so far as possible, to hold any maintenance work or other work around the plant that could be held until the slack period and then we would use our own men to do as much of that work as we could.

Q. Well, what has been the custom as to laying off some men each year at the end of the carrot shipping season?

A. We always laid off some men.

Q. How long were those men laid off for?

A. Well, they are laid off until the season starts again.

Q. All right. Now then, when do you start the plant [559] manufacturing ice to get ready to sell to the sheds for delivery in December each year?

(Testimony of F. A. Willard.)

A. Well, our first operation is to start up the plant and fill our storages.

Q. All right. About when each year do you start your plant?

A. We figure by starting the 1st of November we can fill our storages and have our storages filled in time to take care of the shipments for the sales when they get under way in January.

Q. All right. And then do you keep the plant operating at capacity during the lettuce and carrot season?

A. We try to, yes.

Q. Now, what, Mr. Willard, has been the method of getting the men back to work in the fall after having laid them off for the slack season in the summer and early fall?

A. Previously we never had a set date as to when we would start the plant. We would always try to estimate the amount of ice we would probably handle for the coming season and from that we would figure how much ice we would have to put in storage and we would start our plant in time to get that in storage by the first of January.

Q. That doesn't quite answer my question. What has been the method of getting the men back to work when the plant starts manufacturing ice in the fall? [560]

A. Whenever we decided when the plant was going to start, I would tell the superintendent and he would get word to the men some way, usually some of the boys would be around and tell them and they would go and tell somebody else, and also lots

(Testimony of F. A. Willard.)

of them would be coming around the plant about that time, too.

Q. Was it customary to let those employees come back to work sort of automatically that had given satisfactory service? A. Yes, sir.

Q. That was done without any definite agreement as to the subject, I take it? A. Yes.

Q. Now, who, Mr. Willard, selects the employees in the various departments of the plant, to start manufacturing ice in the fall?

A. Ordinarily the superintendent and myself.

Q. What departments are there in the plant, what are the divisions that you make out there?

A. Well, there is the—there used to be what we called the engine room, and the tank room, and the storage, and the platform. The engine room, of course, has been eliminated.

Q. I believe you covered in your previous testimony the duties of the men in each of those four departments, did you? [561] A. I think so.

Q. I won't go into that again. Now, Mr. Willard, what change, if any, was made in the manufacturing plant in the summer of 1941?

A. We took out the Diesel engines which furnished the power for the plant up to that time, and replaced them with electric motors. We also made an addition to our freezing tank.

Q. And that change-over made it possible for you to get along with fewer employees in manufacturing the same amount or more ice than you had previously manufactured? A. Yes, it did.

Q. How many less employees did that permit

(Testimony of F. A. Willard.)

you to operate with by changing to the electric power?

A. We figured we were going to save eight employees.

Q. And what had been the duties of those eight employees that were used when you had the Diesel power?

A. They operated the Diesel engines and took care of the maintenance and repair of the engines.

Q. How many regular Diesel operators did you ever keep at all times when you had the Diesel engines?

A. We had three Diesel operators and a relief man, and then we had two maintenance men. I believe the last year we had four engine operators.

Q. I see. [562]

Trial Examiner Mouritsen: You mean four and a relief?

The Witness: Four and a relief.

Q. (By Mr. Smith) When you made this change-over from Diesel power to electric power, who then decided which of the old men were to be laid off?

A. The superintendent and myself.

Q. All right. And when was it that you and the superintendent got together to discuss this situation?

A. Well, that was in the fall of '41, just what date I couldn't say.

Q. Prior to the time the plant started up to manufacture ice?

A. Oh, yes; yes. I returned the latter part of

(Testimony of F. A. Willard.)

September and we started the plant some time about the first of November, I believe. And had to decide on it in the meantime.

Q. Yes. Now, as I understand it, you designate your ice manufacturing and selling season by calling it the '40-'41 season? A. '41-'42 season.

Q. What do you mean when you refer to the '40-'41 season for manufacturing and selling?

A. For instance, we start our plant in '41 and we finish that season in '42. The '40-'41 would include a total vegetable season.

Q. All right. You refer to that, then, when you are [563] speaking of the '40-'41 season as the fall of '41 and up to and including the selling season——

Mr. Whitelaw: Fall of '40.

Q. (By Mr. Smith) As the fall of '40 and up to and including July of '41, do you?

A. Yes, sir.

Trial Examiner Mouritsen: Before we leave that, you say you and the superintendent decide that. Who was the superintendent?

The Witness: Mr. Pool.

Q. (By Mr. Smith) And when you refer to some of these documents that we are going to show in evidence, to '41-'42 season, you mean by that the fall of '41 up to and including June of '42?

A. Correct, yes, sir.

Q. Now, Mr. Willard, going to these various men that were laid off. The first one of the men named was Arthur Standifer. His services, I understand, were terminated on the 3rd day of Oc-

(Testimony of F. A. Willard.)

tober, 1941. I believe he testified he had been a can puller. Did he ever apply to you for reinstatement?

A. No, sir.

Q. Did you have any work for him to do after October, October 3, 1941, at the time he was laid off?

A. It was work but we figured there was a more satisfactory [564] men to do it.

Trial Examiner Mouritsen: We will take a short recess.

(A short recess was taken.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Smith): Go ahead and complete your answer, Mr. Willard.

A. It was due to laying off the engine crew, we had to lay off some men, we couldn't put them all back to work. We selected the men we thought were best fitted for the work we had to do.

Q. He didn't happen to be——

Mr. Petersen: I move to strike that last part of his statement as being a voluntary contribution and not responsive to the question.

Mr. Smith: It certainly is responsive.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Smith): I believe you said he never did apply for reinstatement? A. No.

Trial Examiner Mouritsen: He never did apply to you?

The Witness: No.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): About the employee Lester Hart, Mr. Willard. He had worked there a long time, had he not? [565] A. Yes, sir.

Q. And you might just describe what work he did.

A. Well, his principal work was the maintenance of the Diesel engines, but he did work around the plant and had worked at the packing sheds.

Q. What percentage of his work would you say was in connection with the Diesel engines?

A. Well, I would say it was better than 50 per cent he was *no* the Diesels.

Q. And when he was on the stand he testified he spent quite a lot of time making ice chutes. When were the last ice chutes made at the plant?

A. My recollection, the last chutes were made two years ago.

Q. Have there been any chutes made since that time? A. No.

Q. Where were those chutes made?

A. Right in the plant.

Q. In the storeroom?

A. No, they were made in the back end of the engine room.

Q. I see. Are they of a temporary nature or a permanent nature? A. They are permanent.

Q. Do you need any more ice chutes made over there now? A. Not until those wear out. [566]

Q. Is there any chance of those wearing out right away? A. I don't think so.

Q. He also testified he had in the past spent some

(Testimony of F. A. Willard.)

time repairing the cans that are used in the freezing of ice. What do you say about those cans?

A. Well, the tank that required the most work on the cans was our first tank, the cans were replaced. I think they were replaced two years ago with new cans.

Q. Has it been necessary to do any welding or straightening on the new cans since they have been purchased? A. No, sir.

Q. How many years old were the old cans when he worked out there?

A. They have been in there since the plant started, that was from '25 to '43.

Q. How many cans are there to fill the No. 1 tank?

A. Well, sir, I couldn't tell you offhand; I think there are 18 rows of 24 cans to a row.

Q. About what is the size of each can?

A. The dimensions of the can are 11 by 22 by 44 inches.

Q. According to my computation that would be 18 rows of 24 cans, would be 432 cans. Did you buy all new ones for that No. 1 tank? A. Yes.

Q. To replace those that had been there since the year [567] 1925? A. Yes, sir.

Q. Now, Mr. Hart also testified that he spent some time doing repair work of the machinery in the sheds, Mr. Willard. Now, I will ask you whether or not you have made written contracts on each shed with the lessee covering maintenance of the machinery which you included with the shed?

(Testimony of F. A. Willard.)

A. That is true.

Q. Now, I have one of the original contracts here. I show you this, and ask you if it is the original contract now in existence between the Holtville Ice and Cold Storage Company and the K. K. Sharp Company, one of your tenants.

A. Yes, sir.

Q. What is the date of the contract?

A. Well, it was signed the 30th day of December, '39.

Q. For how many years does it cover?

A. Five years.

Q. Now, will you look at paragraph 8 in that contract—I think that is the number.

A. Yes, sir.

Q. And I will ask you to state if that, in substance, is included in all of the leases covering all of the sheds that are owned by the Holtville Ice and Cold Storage Company.

A. It is. [568]

Mr. Smith: I would like to read into the record—it reads as follows: “It is mutually agreed that First Party will not be called upon to make any repairs or alterations or for maintenance of the packing house or equipment during the existence of this agreement, and that Second Party will pay the cost of any necessary repairs or maintenance charges. First Party, however, does agree that if Second Party employs First Party to make repairs or alterations that First Party will make such repairs or alterations at actual cost to First Party.

(Testimony of F. A. Willard.)

“A list of equipment, fixtures, and machinery to be [569] kept on said packing house and to be used by Lessee, is attached hereto and made a part hereof, and Lessee acknowledges receipt of all items listed.”

Now, the contract which I read from is dated the 1st day of December, 1939, by and between the Holtville Ice and Cold Storage Company, a corporation, first party, called lessor, and Kenneth K. Sharp, second party, called the lessee. Now, Mr. Willard, do the various lessees of the various packing houses leased by the Ice Company repair the machinery in their particular sheds as provided in that contract?

A. Yes, they do. The larger packing sheds now have a man of their own that is on the shed all the time. And the smaller ones have some one around that does the most of the work themselves.

Q. Did you in years back do more of that work than you have done in later years?

A. Yes, sir.

Q. Did you do it gratis or did you charge the tenants?

A. We tried to charge for it, but we couldn't collect for it.

Q. So what change did you make in your practice? A. We stopped doing the work.

Q. Although that provision was contained in previous contracts in previous years you started living up to it [570] more strictly in the past few years? A. That is correct.

Mr. Petersen: I object. I ask the question and

(Testimony of F. A. Willard.)

answer be stricken as ambiguous and vague because it states both parties can make repairs.

Trial Examiner Mouritsen: I think it can be cleared up on cross examination. I will deny the motion.

Q. (By Mr. Smith): Mr. Willard, was Mr. Hart's work satisfactory when he was there?

A. Yes, sir.

Q. And why was he laid off?

A. Well, we had no more work that was in the line he was doing. I didn't feel he was fitted to do the kind of work we had left.

Q. Was anyone ever employed to take his place?

A. No, sir.

Q. Now, regarding the employee Roy Davis. I will ask you, Mr. Willard, when you first discussed—strike that. I will ask you if you ever discussed doing away with his services at any time prior to the time he was laid off?

A. Yes, sir, we had.

Q. When was it discussed and with whom did you discuss that?

A. When I went away in June I left instructions with Mr. Smith to let Roy go at the end of the vegetable season.

Q. And that would be when? [571]

A. The latter part of June.

Q. Why did you do that?

A. Well, Roy's work for six months of the year was a total loss to us, we didn't have any work for him to do, and the clear ice season got so low during

(Testimony of F. A. Willard.)

the summer that we just had to reduce expenses during that time of year.

Q. All right. You instructed Herman Smith to let him go at the end of the vegetable shipping season in 1941, which would be around July 1st?

A. Yes.

Q. Now, were you, yourself, away from Imperial County from that time on until some time late in September?

A. Yes, sir.

Q. When was the first time that you knew that your instructions had not been carried out regarding letting him go?

A. When I came back the latter part of September.

Q. And did you have any conversation with Herman Smith when you came back the latter part of September?

A. I did.

Q. What was the conversation?

A. I asked him why Roy was still on.

Q. What did he say?

A. Well, he said that he lost heart and figured he would keep Roy on for a while longer.

Q. What further conversation did you have then? [572]

A. I told him I thought he was making a mistake and he had better let him go right then.

Q. And did you say anything to Herman about re-employing him at any future time?

A. I couldn't say, I don't recall any.

Q. Now, at this time, Mr. Willard, had anyone

(Testimony of F. A. Willard.)

ever told you he had made application for a union or to a union? A. No, sir.

Q. And in your conversation with Herman Smith, was it ever brought out by him that he had any such knowledge? A. No, sir.

Q. Had you heard it from anyone?

A. No, sir.

Q. Now, was anyone ever employed on a full yearly basis to take the place of Roy Davis?

A. No, sir, there was not.

Q. Who handled the work on the delivery platform after his services were terminated?

A. One of the drivers.

Trial Examiner Mouritsen: Do you know which one?

The Witness: Tom Herring.

Trial Examiner Mouritsen: Has he been employed steadily since that time or has he been laid off from time to time?

A. No, he has been employed steadily. [573]

Mr. Petersen: The platform. May we ask that on voir dire?

Mr. Smith: We will come to that.

Q. (By Mr. Smith): Just tell how that work is handled now, Mr. Willard, the work that Roy Davis did.

A. Tom Herring handled it through the vegetable season and after the vegetable season is over he operates a truck; he delivers clear ice.

Q. And who takes the delivery orders for ice?

(Testimony of F. A. Willard.)

Davis said he used to take orders for ice over the telephone.

A. Tom takes that now, Tom Herring.

Q. He does that as well as deliver?

A. No, the delivery he does is in the summer when there is no vegetable ice.

Q. Oh, I see. In other words, there is work there for a man during the vegetable ice season?

A. Oh, yes.

Q. But no work for about five months, to speak of?

A. Six months.

Trial Examiner Mouritsen: Do you still have a man that takes orders for clear ice on the platform during the summer?

The Witness: No, never had one.

Trial Examiner Mouritsen: You never had one?

The Witness: No man on the platform. The man on [574] the platform is on the platform to handle the vegetable ice only.

Q. (By Trial Examiner Mouritsen): Do you have any call for clear ice, people that drive up during the summer?

A. Oh, yes.

Q. That is taken care of by someone?

A. Yes.

Q. Who does that?

A. This boy that puts in part time in the office and the platform. I can't recall his name right now.

Q. Is that Garber?

A. Garber, Jack Garber, yes, sir.

Q. Has he been in steadily since 1941?

(Testimony of F. A. Willard.)

A. Well, now, I couldn't say just when he came on. He came on first with us, working part time, went to school part time. And he finished school and he has been with us steadily ever since.

Q. (By Mr. Smith): He worked afternoons when he was going to junior college, didn't he?

A. Yes.

Mr. Petersen: Fix the time that that occurred.

Trial Examiner Mouritsen: Hasn't he been on steadily in 1942 and 1943 to date?

The Witness: Well, I think he came on some time in the spring of '42. Herman Smith will bring that out for [575] you if you want it.

Q. (By Mr. Smith): All right. Now, going to the witness H. C. Fredenburg. He testified he had worked as a truck driver and a clear ice delivery man and did repair work around the Diesel engines. Was there any clear ice to deliver, Mr. Willard, after October of 1941, that is, for the next few months?

A. After October?

Q. Yes.

A. No, sir.

Q. Do you know what route Mr. Fredenburg had been taking care of? That is, had he been taking care of any business houses in town?

A. No, he was on a country route.

Q. Delivering ice to farmers?

A. Yes.

Q. Was his route worked by anyone else after October?

A. Well, it was doubled up with another truck

(Testimony of F. A. Willard.)

so that when he was gone there was another truck eliminated.

Q. I see. And did he ever apply for reinstatement? A. Yes, sir.

Q. Fredenburg? A. Yes.

Q. When?

A. He came to me in the office one day and asked if we [576] were going to use him that winter, and I told him no, I was not.

Q. Then why did you tell him that?

A. I told him that we couldn't take care of all the men we had previously and we just had to let some of them go.

Mr. Ryan: Find out the time when that was.

Q. (By Mr. Smith): Do you know what date that was, approximately?

A. Well, it was in the fall of '41, I believe it was after the plant had started.

Q. Now, Perry T. Blankenship. Wait a minute. Let's go back to Fredenburg a minute. What had Fredenburg worked on in addition to delivering ice?

A. Sometimes he worked in the storage, storing ice and I think that fall we got work for him with the contractor that was working at the plant.

Q. I believe he testified he did some repair work around the Diesel engines also, do you remember that?

A. No, I don't think he did. He might have wiped up some grease around them, something like that, he wouldn't do any repair work on the engines.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: Was he a truck driver during the preceding vegetable ice season?

The Witness: He was, yes.

Q. (By Mr. Smith): Now, the employee Perry Blankenship. [577] He said he worked until August 15, 1941, and then he was laid off and then he worked one day in September cleaning up flood water one Sunday. What was his work in the plant, Mr. Willard?

A. I believe he had worked in the storage and also pulled ice.

Q. He testified he was a relief operator for the Diesel engines.

A. He may have been.

Q. Did he ever apply to you for reinstatement?

A. No, sir.

Mr. Ryan: That has reference to Mr. Willard personally, I take it, the question?

Mr. Smith: Surely, that is all he can answer to.

Trial Examiner Mouritsen: On respondent Ice Company's Exhibit 1-A his name is set out as B-l-a-n-d—I presume that should be Blankenship.

Mr. Smith: I think so.

Trial Examiner Mouritsen: He is listed under the can pullers on that.

Q. (By Mr. Smith): Did you have any reason at all for failing to rehire him, except that you didn't have enough jobs to go around?

A. That is all, I did not.

Q. What would your answer be to that same question as to Fredenburg. [578]

A. Same thing.

(Testimony of F. A. Willard.)

Q. Now, the witness Herman Pool testified that he was laid off by his brother Pete on or about September 30, 1941. Had you heard any talk around the plant that there was dissatisfaction among the men because of Pete Pool giving Herman Pool the easiest work and extra work, or anything of that kind? A. Yes, I had.

Mr. Petersen: May we fix a time, somewhat approximate time?

Trial Examnier Mouritsen: He is going into it. The answer was merely he had heard it. We will now hear the details.

Q. (By Mr. Smith): When had you heard something of that nature?

A. I had heard it several times.

Trial Examiner Mouritsen: When did you first hear it?

The Witness: Probably a year before we changed over in the plant.

Trial Examiner Mouritsen: That would be when, in July of 1940, or August?

The Witness: No, I couldn't pin it down that definite, there was no direct complaint came to me, some of the boys would tell me about it so I knew there was feeling in the plant. [579]

Q. (By Mr. Smith): What was the substance—

Trial Examiner Mouritsen: Now, wait a minute. Let's find out who the individuals were, find out as definitely as we can what there was to this.

Q. (By Mr. Smith): Do you now recall who you talked to about Herman Pool and Pete Pool?

(Testimony of F. A. Willard.)

A. I didn't talk with anyone about it. The information came to me, I didn't solicit it. I know, in one instance, Herman Smith told me about it.

Q. I see.

A. He will probably remember the date.

Mr. Petersen: Move to strike the response to all this line of questioning.

Trial Examiner Mouritsen: I will strike all except he said Herman Smith told him about it.

Q. (By Mr. Smith): Do you remember anyone else that told you about it?

A. I think Herman told me about two instances.

Q. Can you fix the date any more certain than that?

A. No, I can't.

Mr. Ryan: That is Herman Smith?

The Witness: Herman Smith, yes.

Trial Examiner Mouritsen: Let's find out what Smith said.

Q. (By Mr. Smith): Will you give us the substance of [580] what he told you?

A. He told me there was a complaint about Herman, about his brother showing partiality, and there was some feeling among the men about it.

Q. Did he tell you what man or men had talked to him?

A. No, I don't recall that. I know one instance he told me there was a complaint about setting Herman over somebody that was ahead of him. And there was another complaint about getting over time that he wasn't entitled to, or more than he was entitled to, something to that effect.

(Testimony of F. A. Willard.)

Mr. Petersen: Again I move to strike the entire answer as being ambiguous and vague and not responsive and entirely hearsay.

Trial Examiner Mouritsen: I will deny the motion. You have fixed the time, I think, as about a year before the change-over.

Was that the first time you heard from Herman Smith about it?

The Witness: Well, I wouldn't say that, it was during that year.

Q. (By Mr. Smith): Do you know when the last time was that you discussed it with Herman Smith?

A. No, I couldn't say that, I don't know definitely.

Q. Was there any discussion about the advisability of keeping Herman Pool immediately prior to the time he was let [581] off? A. No.

Mr. Petersen: We are going to object to that question, it has already been asked and answered.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: No, there was no talk about it. I gave instructions what to do about it.

Q. (By Mr. Smith): Who did you give instructions to? A. The superintendent.

Q. Who was the superintendent?

A. Pete Pool, his brother.

Q. What did you say to Pete Pool?

Mr. Petersen: Fix a time or date.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: All right, Mr. Petersen.

Q. (By Mr. Smith): Tell us about when you talked to Pete Pool about it.

A. When we were going over the list of men to put to work in the plant when it started up again.

Q. That was in September of 1941?

A. September or October, probably in October.

Trial Examiner Mouritsen: You say you got back the latter part of September. What does that mean, September 30th or when?

Q. (By Mr. Smith: Can you give us the substance—— [582]

Trial Examiner Mouritsen: I would like to find out about this.

Mr. Smith: Oh.

Trial Examiner Mouritsen: When he got back.

The Witness: It must have been around September 25th I got back, because I know I was in Eugene on September 15th. My recollection is it took five days to come down.

Trial Examiner Mouritsen: What would that be, September 20th or September 25th?

The Witness: 20th, that is right.

Q. (By Mr. Smith): Well, can you give us the substance of what you said to Pete?

A. I told Pete that we wouldn't have any more relatives around the plant.

Q. By the way, you had also had another brother, Bailey Pool, from the same family, had you not?

(Testimony of F. A. Willard.)

A. Yes, but he wasn't there at that time.

Q. What had Herman Pool been doing at the Holtville Ice and Cold Storage Company during the last year of his employment?

A. In the engine room, operating Diesels.

Q. And what work was he used for in the summer time after the vegetable ice season ended about July 1st, 1941?

A. He was one of the ones that——

Trial Examiner Mouritsen: Can't somebody else tell [583] us better about this? This witness wasn't here during all that period.

Mr. Smith: He may have given instructions, I don't know.

Q. (By Mr. Smith): Do you know what he did, Mr. Willard, while you were gone?

A. To the best of my knowledge he did repair work around the plant. Before I would go away there would be a list of work to be done which I would approve and they would go ahead and do it. I do know he was on—at the plant all during the summer except when he was away for his vacation.

Q. All right. What then would you say was the reason why that employee was not on after September 30th, 1941?

A. Principally because of the feeling of the men toward him, his favoritism.

Mr. Petersen: Mr. Examiner, once again I am going to object to these ambiguous answers, unless the definition of the men can be definitely set forth by Mr. Smith.

(Testimony of F. A. Willard.)

Mr. Smith: Definition of the men?

Mr. Petersen: The feeling of the men against him.

Mr. Smith: That goes to the weight of it.

Trial Examiner Mouritsen: I don't know of any better witness than this witness who would know the reason he would have for letting him out. I will permit it. [584]

Q. (By Mr. Smith): What other reason, if any, Mr. Willard, did you have?

A. That was practically the only reason. No complaint about his work.

Q. Now the employee Herman Fruhn. He testified he had been a crane operator. Herman Fruhn testified, I believe, that he had a couple of conversations with you. Did he? A. No, sir.

Q. Did he have any conversation with you?

A. He had one.

Q. When was it?

A. That was just after the plant had started.

Q. What did he say to you and what did you say to him?

A. He asked me why he didn't get his job back, and I told him that we didn't have jobs for all the boys and just had to let him go.

Q. Now, do you recall whether or not Herman Smith ever asked you later in the year, November or December, if he could re-employ Herman in some capacity? A. Yes, he did.

Q. About when was that?

A. I think that was in December.

(Testimony of F. A. Willard.)

Q. Of 1941? A. Yes, sir.

Q. Do you remember what Herman said to you and what you [585] said to him?

A. He told me that——

Q. Herman Smith said to you I am talking about now.

A. Herman said that Fruhn was back and wanted to get some work, and we didn't have any. I told him we didn't have any work. Herman said there was a place in the storeroom, and I told him I had no objection to putting him on if he wanted to go in there.

Q. Did you put him on? A. Yes.

Q. Did Fruhn stay there?

A. He stayed one day—or one shift. He worked one shift.

Q. Then what happened to him?

A. He quit.

Q. Did he ever talk to you again after that?

A. No, sir.

Q. Did he ever apply for reinstatement?

A. No, sir.

Q. He had been a crane operator for several years, Mr. Willard. What reason, if any, was there he wasn't selected to operate the crane when the plant started up in November, 1941?

A. Well, we always had a lot of trouble with Herman. He liked to monkey with the machinery, he was always adjust- [586] ing the crane; when he got through adjusting it we had to get somebody to fix it up; just couldn't keep him away from it.

(Testimony of F. A. Willard.)

Q. Did you say anything to Herman Smith about that when he wanted to put him back on?

A. I don't recall that I did. I might have.

Q. By the way, who did you put on the cranes in the fall of 1941?

A. Well, we have a list of them here. Put on M. K. Stout and G. Harlan and L. Gettle.

Q. Now, what was there about those men that made you select those over Fruhn?

A. They are better men.

Q. In what way?

A. The way they did the work.

Trial Examiner Mouritsen: Had they all been ice pullers before?

The Witness: No. Stout hadn't pulled ice before; the others had.

Q. (By Mr. Smith): Stout had been working as a Diesel engine operator? A. Yes.

Q. Real mechanic? A. Yes.

Q. Does a man need some mechanical ability to operate that [587] crane? A. Not necessarily.

Q. He shouldn't monkey with the machinery, is that right? A. That is it exactly.

Q. Now, Mr. Willard, when you and Pete Pool selected the crew to start operations in the fall of 1941, was there any question discussed between you and Pete as to whether any of them had or had not made application to join a union or had joined a union? A. No.

Mr. Ryan: I object, I think it calls for a self-serving declaration.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): Was there any discussion at all between you and Pete as to which ones had or had not made application to join a union?

A. No, there was not.

Q. Was the fact that some had applied for union membership considered by you at all in selecting the men to start the plant? A. No, sir.

Q. Did you select some five that had——

Mr. Petersen: To which we are going to object on the basis the witness has testified he didn't know who was [588] members of the union or not?

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Smith: It has been brought out in the testimony.

Trial Examiner Mouritsen: I overruled the objection.

Q. (By Mr. Smith): You sat throughout this hearing, did you not, Mr. Willard? A. Yes.

Q. You have heard the names mentioned several times of those that did make applications to join the union? A. Yes.

Q. Of those men named that did make application to join the union, did you put back in the fall of 1941 some of those men to start operations?

A. Yes.

Q. Can you tell us the names of those that were put back that had made applications, according to the testimony here?

(Testimony of F. A. Willard.)

Mr. Petersen: May we have the date they were put back? The fall is rather ambiguous.

Mr. Smith: I can give you that from the payroll.

Trial Examiner Mouritsen: It is on the payroll, it is in evidence as Respondent's 2.

Mr. Petersen: No, it just shows who was working.

Trial Examiner Mouritsen: No, it has a date on it, October 29, 1941. [589]

Mr. Petersen: All right.

Q. (By Mr. Smith): First I will ask you about the employee Henry Miller. Did you try to put him back to work? A. Yes, sir.

Q. In what way, what did you do to get him back?

A. When we were ready to start up he was one of the ones we had selected and Mr. Pool sent word to him, I believe he phoned him, to come in on a certain date when we were going to start the plant. We found he had already left and had gone up to the Coast to work.

Q. And then what others that had made application there for the union did you put back to work, of those several men that had made applications according to the testimony here?

A. You mean made application to the union?

Q. Yes.

A. Well, I couldn't tell you that without referring to that list we made up. There was H. G. Miller.

(Testimony of F. A. Willard.)

Q. He was requested to come back?

A. Yes, sir. The others we did put to work, M. K. Stout, H. Fruhn, R. H. Ireland, Tom Herring, G. P. Drinkard.

Q. Those men are still working over there?

A. Of course, Miller isn't there, and Fruhn is not there.

Q. They were both offered employment, though, were they?

A. Yes, Fruhn did work one day; Miller did not come to [590] work.

Mr. Ryan: Fruhn was offered the storeroom job long after the plant had started?

Mr. Smith: Shortly after it was started.

Mr. Petersen: Long.

Trial Examiner Mouritsen: The record will show just what he testified and what Mr. Willard has already testified. However, he wasn't one of those who started on October 29, 1941.

The Witness: Fruhn?

Trial Examiner Mouritsen: Fruhn.

The Witness: No, sir.

Q. (By Mr. Smith): Mr. Willard, now, when you returned in September of 1941 from being out of the Valley, did you have a conversation with Hugh Osborne? A. Yes, sir.

Q. And do you remember what date it was?

A. Well, it was soon after the 25th of September.

Q. How was the conversation held?

A. I phoned Mr. Osborne.

(Testimony of F. A. Willard.)

Q. And can you tell what you said and what he said to you?

A. Soon after I found that there were union activities in the plant, I phoned Hugh and told him that there was some union activities around the plant and asked him if he knew anything about it.

[591]

Q. What did he say?

A. He said yes, he knew all about it.

Q. Anything else said?

A. I asked him what, if anything, I should do about it. He said, "Do nothing." He said, "I will be over in a few days and see you."

Q. Now, Mr. Willard, going back to the year 1936, you have heretofore testified that the Holtville Ice and Cold Storage Company commenced making contributions to the Associated Farmers in the year 1936. When you started making contributions to the Associated Farmers, did you expect anything in return?

A. Nothing that I knew of at the time, no.

Q. Were you told that you would get anything in return for your contributions? A. No, sir.

Q. What did you understand to be the purpose of the Associated Farmers at the time you made your contributions?

Trial Examiner Mouritsen: That is asking what anybody told him about the purpose of a thing like that. Ask him if he asked anyone about the purposes.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): Were you informed by anyone about the purpose of the Associated Farmers when you commenced making contributions?

A. Well, I expect I already knew something about the [592] purpose of the Associated Farmers from reading about it in the papers.

Trial Examiner Mouritsen: Did Mr. Osborne come to you and give you a sales talk before you started to contribute?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Let's find out what he said on that occasion.

Q. (By Mr. Smith): Do you remember the substance of what he said?

A. He was soliciting funds for the Associated Farmers. And told me it was an organization of farmers who were watching and guarding against subversive activities and Communist activities, and I gave him some money.

Q. You say you had received information on the outside, through the newspapers, and so forth?

A. I believe I had read what the Associated Farmers were doing.

Trial Examiner Mouritsen: Over what period had you read about them?

The Witness: I think we have shown the first contribution was in 1936.

Trial Examiner Mouritsen: Well, in other words, I suspect that Mr. Smith is going to ask you what was the gist of what you read about. I would like

(Testimony of F. A. Willard.)

to find out over what [593] period, so if there is a possible check-up on that——

The Witness: I can tell you an incident that was going on at that time, although it won't fix the date for me or anyone else. I do know what was going on, it can be checked up. At that time we were shipping fuel oil for our engines in from Los Angeles and at the same time the farmers were having trouble delivering their crops into Los Angeles.

Trial Examiner Mouritsen: What kind of trouble?

The Witness: Tipping trucks over and beating up drivers, and damaging trucks.

Trial Examiner Mouritsen: Was it the Communists that were doing that?

The Witness: I couldn't tell you who was doing it.

Trial Examiner Mouritsen: Did you suspect it might have something to do with labor organizations?

The Witness: I did, yes, sir.

Trial Examiner Mouritsen: What was the difficulty about the fuel oil?

The Witness: Our fuel oil at that time was coming down by truck, and we were concerned about some of our fuel oil being stopped on the highways. And Hugh told me if it was necessary they would go into Los Angeles and get the fuel oil and bring it out, and that was good enough for me.

Q. (By Mr. Smith): Now, did you, as a fact,

(Testimony of F. A. Willard.)

ever get [594] anything from the Associated Farmers that you know of? A. No, sir.

Q. Mr. Willard, did you ever instruct the Associated Farmers to form an employees association in your plant or to advise the employees to form one? A. No, sir.

Mr. Ryan: I object to that, it calls for a conclusion.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): Or did you ever instruct Hugh T. Osborne to form an employees association or to advise the employees to form one?

A. No, sir.

Mr. Ryan: I object to that, also calls for a conclusion; move to strike it.

Trial Examiner Mouritsen: I will overrule the objection and deny the motion to strike.

Q. (By Mr. Smith): Mr. Willard, what was the first knowledge you had that an employees association had been formed?

Trial Examiner Mouritsen: Among your employees.

Q. (By Mr. Smith): Among your employees.

A. It was at the time the bargaining committee of the employees association came to see me.

Q. (By Mr. Smith): And can you fix the date of that [595] approximately?

A. It must have been in October some time.

Q. 1941? A. Yes, sir.

Q. And do you remember who first called on you,

(Testimony of F. A. Willard.)

that is, whether it was a committee or whether it was one man or several?

A. No, it was—there were at least two. Hugh Osborne came in with them.

Q. When?

A. When this committee came in.

Q. The first time or the second or third time, or when?

A. The first time.

Q. The first time?

A. Yes. Hugh came in with them and introduced them as a bargaining committee of the employees association.

Q. Tell us what happened then at that time.

A. He says, "These boys want to negotiate with you." And asked if it was all right. I said, "Yes, certainly, go ahead and do your negotiating." Then Hugh left.

Q. And who among the employees was on that bargaining committee, that you now recall? [596]

The Witness: George Harlan was with him and there was another man, I don't just remember who it was. [597]

Q. (By Mr. Smith): If you do remember whether or not you had been visited by Mr. Harlan previous to the time that Hugh Osborne came in with him or not?

A. I couldn't say definitely about that, the boys going in and out all the time in the office, he might have come in there.

Q. All right. Now, after that day Mr. Osborne did come in with Harlan and one other man, did you

(Testimony of F. A. Willard.)

reach an agreement between the Ice Company and that bargaining committee?

Mr. Ryan: I object to that, it calls for a conclusion.

Mr. Whitelaw: He can say what happened or what was said.

Trial Examiner Mouritsen: Yes.

Mr. Smith: I will withdraw the question, Mr. Ryan is correct.

Q. (By Mr. Smith): Can you tell us what happened that day that Mr. Harlan and another man came as a bargaining committee?

Mr. Ryan: What was said and what was done.

Trial Examiner Mouritsen: After Mr. Osborne left, tell us what happened. You told us what happened up until [598] the time Mr. Osborne left.

The Witness: The boys started talking about various things they wanted.

Q. (By Mr. Smith): Tell us what they said as close as you can.

A. They talked about many things, and I told them the best thing to do was for them to reduce that all to writing and we could take up one at a time and thresh it out.

Q. Do you remember what subjects they were talking about?

A. They were talking about increase in pay and talking about vacations, talking about sick leaves; several other things.

Q. All right. Now, when you suggested they reduce that all to writing, what was said by them?

(Testimony of F. A. Willard.)

A. Well, they agreed that that was the proper thing to do and they would go ahead and do it.

Q. When next were you visited by anyone purporting to represent the employees association?

A. Well, Harlan came in soon after that and said he had—they had a proposed contract written out and they wanted to have a meeting and go over it.

Q. Was he alone or with someone?

A. He was alone then.

Q. Tell us everything he said and you said, as well as you can now remember. [599]

Trial Examiner Mouritsen: Let's find out again, first, how long after this first meeting this second one took place.

The Witness: Just a few days, less than a week.

Mr. Petersen: Was that the latter part of October or the first of November? I would like the date fixed a little closer, if we can.

Q. (By Mr. Smith): Do you know the date, Mr. Willard?

A. No, I couldn't say the exact date.

Trial Examiner Mouritsen: You can't fix the date of the first one any more than it was in the month of October?

The Witness: No.

Trial Examiner Mouritsen: And this one was not more than a week later?

The Witness: Yes.

Q. (By Mr. Smith): Go ahead and tell us about that second meeting with Harlan as close as you can, what you said and what he said.

(Testimony of F. A. Willard.)

A. He said they had a proposed agreement drawn up and they wanted a date for another meeting to go over it with us. And I told them to—any date that was convenient for them we would go over it.

Q. Did he leave anything with you?

A. No.

Q. That was all that took place. Did you arrive at a date with him? [600]

A. Yes,—no, we didn't arrive at a date. I told them any date that was convenient for them. My recollection is that—I think it was the following day, he said they would like to meet with me that afternoon.

Q. Did you meet with someone that afternoon?

A. Yes.

Q. And who came that time?

A. The whole committee came that time, there were three of them.

Q. Who were they, if you now remember?

A. Well, I think it was Harlan, he told me he was the president, and I think he said that Tom Herring and Lloyd Gettle were the bargaining committee, is my recollection.

Q. Now, do you remember what was said by each of you during that ensuing meeting?

A. Well, they brought in a proposed contract and they had some corrections of their own they had put in it, and we discussed that contract; the different features of it.

Q. By the way, how was that contract written?

(Testimony of F. A. Willard.)

A. Well, it was typewritten on a blank sheet of paper, similar to that (indicating).

Trial Examiner Mouritsen: Letter size or legal size?

The Witness: I think it was legal size.

Q. (By Mr. Smith): Is that original paper that they brought in around here? [601]

A. I think Mr. Whitelaw has it.

Q. While they are reading that, Mr. Willard, did you ever contribute anything to the employees association? A. No, sir.

Mr. Ryan: I object to that and move to strike it as a conclusion.

Trial Examiner Mouritsen: I will overrule the objection and deny the motion.

Mr. Petersen: No objection to the introduction of it.

(The document referred to was marked as Respondent Ice Company's Exhibit 3, for identification.)

Q. (By Mr. Smith): I will show you a document which is marked Respondent Ice Company's Exhibit 3 for identification, and ask you if you have ever seen that document before.

A. Yes, this is the document the bargaining committee brought in.

Trial Examiner Mouritsen: Is that the one they brought in on the first occasion they ever brought any in?

The Witness: Yes, sir.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): What discussion did you have, if any, with the bargaining committee when they presented that document?

A. The first meeting we didn't have a very long discussion, there were several things in it that I objected to.

Q. Do you remember now what they were? [602]

A. I could probably tell by looking through it again.

Mr. Smith: May the witness look at the Exhibit 3?

The Witness: Well, we had a discussion on the truck drivers and machinists and office boy, evidently, and I know we had a discussion on vacations.

Q. (By Mr. Smith): What did the boys contend for on vacations?

A. They asked for two weeks and more if they wanted it. And on the sick leave, discussion on that. They wanted a week's sick leave with pay.

Q. Did you ever agree to that?

A. No, I didn't. We finally agreed that we wouldn't let them have a definite six days' leave with pay, but we would leave it open for discussion between the Association and the company on any individual case that might come up. We didn't agree to any six days' leave. Then there was discussion on holidays, and then there was a discussion about drinking on duty and incompetency, grounds for a dismissal. And then there was dis-

(Testimony of F. A. Willard.)

discussion about the 40-hour week. And there was discussion about making it a closed shop.

Q. Now, do you remember what they said about that? Did you agree to that or object to it?

A. I objected to it.

Q. What did the boys say about that? [603]

A. Well, they insisted on having a closed shop. The argument was that was the only way they could maintain the majority of the employees.

Q. And did you finally agree to the contract with that provision in it?

A. Well, I finally did, yes.

Q. Did you that first meeting?

A. No, sir. No, they realized right away it was getting into a lengthy discussion and they didn't want to assume the responsibility of O. King any change and they asked to have another meeting and have all the boys present.

Q. All the employees that were in the union?

A. No, all the boys in the plant.

Q. I see. And what was done in that regard?

A. I agreed to it, and our subsequent meetings were with the—not always all the boys, but with a good majority of them.

Mr. Petersen: Fix the date for those meetings.

Q. (By Mr. Smith): Let's take your first meeting with all the employees or all those that attended. Do you remember how long that was after they presented this written contract?

A. It was just immediately following, within two days, anyway.

(Testimony of F. A. Willard.)

Q. And did the foreman or supervisor attend?
[604]

A. The what?

Q. Did your foreman or supervisor attend?

A. No.

Q. Or clerical help?

A. Well, Herman was there.

Q. Well, now, can you tell us what took place in that meeting with the employees there?

A. Well, we discussed these various questions that had come up and agreed on them and a final——

Mr. Ryan: I object to the conclusions of the witness and object to anything other than what was actually said by various persons in the meeting.

Mr. Smith: That is right.

Q. (By Mr. Smith): When you say we agreed on it, that, in law, they say that is a conclusion, Mr. Willard. You will have to say what you agreed to and what they agreed to and what they said.

A. We agreed on these questions I have mentioned before.

Q. Tell us what was said, now.

Mr. Ryan: I move to strike his conclusion.

Trial Examiner Mouritsen: I will leave it in. Tell us what was said. It is objectionable if you say we agreed to it, but if you say I said I would agree to it and they said they would agree to it, it is not objectionable.

The Witness: Yes, sir. There was a discussion [605] about the hourly wage, which was agreed to.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): What did you tell them you would do and what did they say they would do?

A. Well, that would be pretty difficult to say now. The contract we made would, I think, be the best evidence of it.

Trial Examiner Mouritsen: We are trying to find out what the discussion was that led up to the contract that was finally made.

The Witness: Well, there was a discussion on the rate of pay, the hourly rate. According to this they asked for 85 cents an hour. Storeroom men 75 cents an hour.

Q. (By Mr. Smith): Did you agree to that? Tell us what you said to that.

A. I couldn't tell you whether that was the rate we agreed on at that time or not.

Mr. Smith: I guess the witness can refer to the written contract, can't he, of 1941?

Mr. Ryan: The contract speaks for itself, if that is all we want to find out. If it is in there he agreed to it, if it isn't he didn't agree to it.

Trial Examiner Mouritsen: Can you tell us of any of the discussions that preceded the making of the first agreement which I think is Board's Exhibit 5?

The Witness: The discussion that we had at this meeting? [606]

Trial Examiner Mouritsen: Yes.

The Witness: Well, for instance, they asked for 85 cents an hour, for instance, and it is pretty difficult to say what you would answer to that.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: You said no, you wouldn't give 85 cents an hour, is that right?

The Witness: I couldn't tell you that even.

Trial Examiner Mouritsen: My recollection is that they didn't get 85 cents an hour.

The Witness: I suspect you are right.

Mr. Smith: Let's let the witness refresh his memory on the 1941 contract.

Mr. Petersen: I would like, Mr. Examiner—off the record, please.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

We will take a short recess.

(Short recess taken.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Smith): Now, Mr. Willard, you have had an opportunity to read the 1941 contract. Does that refresh your memory any as to what the discussion was preceding the 1941 contract? [607]

A. Yes, the principal discussion was on the hourly wage.

Q. Do you remember what the men said and what you said?

A. Well, the men wanted an 85-cents an hour rate, for operating ice pullers, as they call it.

Q. What did you say to them about that?

A. I told them I felt that was too high, it was considerably higher than other ice plants in the

(Testimony of F. A. Willard.)

Valley were paying. We finally agreed on a sliding scale the first year, 66-1/2 cents and the second year 69 cents and the third year 72 cents. That scale was for new men going to work that fall, would be on a 66-1/2 cents rate per hour and the men who had worked two years would be on the 69 and the men who had worked three years would be on the 72 cents. And on the storeroom the men asked for 75 cents per hour.

Q. What did you say?

Trial Examiner Mouritsen: You finally agreed upon the wage scale set out in the contract?

The Witness: Yes. Then another thing we had considerable discussion on was the delivery of white ice. We had had at that time one year's experience on delivering ice on a per ton basis, and it worked out, I thought, very satisfactorily and resulted in delivering—more easy delivery of ice, the men had an incentive to work for something. And we delivered the ice easier and with less trouble. [608]

Q. (By Mr. Smith): That is, you paid them so much a ton for delivering it? A. Yes.

Q. I see.

A. There was some objection to that, but not very much. We finally agreed to it and we have been doing that ever since.

Q. You had never done that before that time?

A. I think we did that one season before, we had had one season's experience

Q. When you refer to white ice, what do you mean?

(Testimony of F. A. Willard.)

A. That is the ice delivered to vegetable packing houses.

Trial Examiner Mouritsen: How is that different than clear ice?

The Witness: The white ice we call vegetable ice and the clear ice we call domestic ice. There wasn't much discussion on the question of vacation. We agreed two weeks vacation with pay. We didn't agree to another week's sick leave. And we didn't agree to another week's layoff for holidays. And the company finally agreed to a closed shop.

Q. (By Mr. Smith): All right. Now, Mr. Willard, after that Exhibit 3 was gone over between you and the men, what was next done toward drafting an original agreement which you signed?

A. Well, all of this I have just discussed probably took, [609] my recollection is it took three meetings, and when we had finally agreed on everything, they asked me if I would have the contract written up somewhere. My recollection is that Herman took it to a public stenographer in town and drew it up, wrote this one (indicating).

Q. Who is the public stenographer?

A. Lena Bridenstein.

Q. Public stenographer in Holtville?

A. Yes.

Q. And is she the one that typed that copy that is signed, the original? A. Yes.

Q. Then to briefly state what advantages did the men secure by that bargaining they had not previously enjoyed?

(Testimony of F. A. Willard.)

Mr. Ryan: I am going to object, that is immaterial.

Trial Examiner Mouritsen: I think I will overrule that, I would like to find out. I think that is one of the elements that the Board has taken into consideration in similar cases.

The Witness: They got an increase in wages, they got another week's vacation with pay. We didn't grant a sick leave but we did agree to assist if they would present a case that was deemed to be worthy of assistance.

Trial Examiner Mouritsen: Was that provision made a part of the contract? [610]

The Witness: No, it is mentioned in there, but——

Mr. Whitelaw: It is in the contract.

Q. (By Mr. Smith): Now, there is a provision in the contract which provides that the employer shall deduct from the employees' pay their dues. Who requested that provision?

A. The employees.

Q. Did Mr. Osborne ask for or receive any benefits from the company?

A. Not from the company, no, sir.

Mr. Ryan: When do you have reference to?

Mr. Smith: At any time.

Mr. Ryan: Are you talking about these negotiations?

Mr. Smith: Yes, regarding these negotiations.

Q. (By Mr. Smith): Now, Mr. Willard, after the spring of the 1941 contract, which is a Board's

(Testimony of F. A. Willard.)

exhibit, did you live up to all these provisions in there that you were supposed to live up to, so far as you know? A. Yes.

Q. And after that contract had been in force a year, was there a second contract for the year commencing in November, 1942? A. Yes, sir.

Q. And tell how that came about that that was signed? Did anyone call on you?

A. Yes, they made a written application for another [611] meeting. That was in my office before I got back.

(A document was marked Respondent Ice Company's Exhibit No. 4, for identification.)

Q. (By Mr. Smith): I show you what I have had marked for identification as Respondent Ice Company's Exhibit 4.

Mr. Smith: At this time I would like to offer in evidence the 1941 contract, which I think is Board's Exhibit 5, unless it has been received.

Mr. Ryan: It is in evidence.

Mr. Smith: I will offer Respondent Ice Company's Exhibit 3 in evidence.

Trial Examiner Mouritsen: Is there any objection?

Mr. Ryan: Wait a minute. I want to ask this witness a question on voir dire, to really find out something about this contract.

Mr. Smith: Let me go ahead then with this.

Q. (By Mr. Smith): Showing you Respondent Ice Company's Exhibit 4, for identification, Mr.

(Testimony of F. A. Willard.)

Willard, I will ask you if you have ever seen that letter before? A. Yes.

Q. When and where did you ever see it?

A. I think that was sent to me at Bend, Oregon.

Q. I think the envelope is attached to it.

A. That was for the return of this (indicating).

Q. Oh. [612]

A. I noted receiving it August 10, 1942.

Q. Where were you on August 10th?

A. Bend, Oregon.

Q. At any rate, you did receive that written request for bargaining rights for another year, did you? A. Yes.

Mr. Smith: I will offer that as an exhibit next in number.

Trial Examiner Mouritsen: Is there any objection to this offer?

Mr. Ryan: No objection.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit No. 4, was received in evidence.)

Mr. Ryan: In connection with the offer of Respondent Ice Company's Exhibit 3, I would like to ask a couple of questions on your offer and get that over with.

Voir Dire Examination

Q. (By Mr. Ryan): Mr. Willard, Respondent Ice Company's Exhibit 3, is composed of five sheets of paper, of which three are typewritten and the other two appear to be written in longhand. At the

(Testimony of F. A. Willard.)

time you received these proposals from the Association, did it consist of three typewritten pages and two handwritten pages?

A. That last sheet might have been mine, the others were [613] attached to it.

Q. I show you the third page.

A. This is the one I had reference to, that came with it.

Q. That came with it?

A. Yes, that came with it.

Q. Those handwritten pages came with it?

A. Yes.

Q. They were attached together when you got them, like that? A. Yes.

Mr. Ryan: I have no objection.

Trial Examiner Mouritsen: Was this the document Mr. Herman Smith took to the public stenographer for typing in final form?

The Witness: I think it was, yes, sir.

Trial Examiner Mouritsen: Was this the document that you used throughout all of these negotiations with the Association?

The Witness: I am sure it was.

Trial Examiner Mouritsen: There were no other written proposals that were furnished you by the Association, is that right?

The Witness: I think that is right.

Trial Examiner Mouritsen: There were no other written proposals that you furnished the employees association?

The Witness: No. [614]

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: I will receive it in evidence as Respondent Ice Company's Exhibit 3.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit No. 3, was received in evidence.)

RESPONDENT ICE COMPANY'S
EXHIBIT No. 3

PROPOSAL
~~AGREEMENT~~

This agreement, made and entered into this..... day of19....., by and between the Employees Association of Holtville Ice & Cold Storage Co., hereinafter called the Association and Holtville Ice & Cold Storage Co. Hereinafter called the Employer.

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Co. and situated in ~~the~~ Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representative of the employees of the second part,

Now, therefore, for and in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

1. The Employer recognized the Association as the sole and exclusive representative of the em-

(Testimony of F. A. Willard.)

employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspensions of work by party signatory hereto during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement regarding wages and plant operation shall be settled by arbitration in the following manner: Each party shall appoint two representatives who may decide the issue by a three-fourth's vote, which shall be final and binding on the parties, or failing to so agree, shall by a three-fourths vote select a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Six days shall constitute a week's work.
~~Tips and gratuities shall be retained by the employee.~~

7. The wage scale shall be as follows:

7. The wage scale shall be as follows:
Eight hours shall constitute a working day.
and 40 hours a week
Operating Ice pullers 85¢ per hr; Storeroom men
75¢ per hr;

Truck drivers, machinists, Office boys, ~~X~~
Garage men and other help not now
employed, (when on full time wages)
wages shall be agreed upon by members
of this association and their employer.

Anyone working for this comp any, shall
be entitled to 2 weeks vacation on full
pay, and more without pay if agreeable to employer.
Any employee shall be granted six(6)
days sick leave on pay, by presenting
doctors written sick leave certificate

Employees working the following Holiday
New Years, Fourth of July, Labor Day, Armistice
Day, Thanksgiving and Christmas shall
have one extra day on pay added to the
vacation period for each day worked

No existing privileges which have hereto
been been extended to the employees
shall be terminated by the signing
of this agreement.

Employer shall have right to fire without
reasons for dishonesty or drunkenness.
Employee must stand on shift until
relief shows up and may not ask for over
time (time & one half) for the first shift so run.

Any person becoming an employee
of employer shall within 15 days become
and remain a member in good standing
of the association - 9

~~10/10/10~~ 10/10/10
~~10/10/10~~ 10/10/10
10/10/10

(Testimony of F. A. Willard.)

Relief help shall ~~receive~~ be on _____ scale of _____
the person relieved. There shall be no reductions
other than for State and Federal taxes.

8. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

9. This Agreement shall remain in full force and effect up to and including the _____ day of _____, 19____.

10. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph ~~#3~~^{#7} hereof.

11. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

12. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

In witness whereof, the parties hereto have set their hands.

Employer for the

By _____

For the Association

By _____

Its President

By _____

Its Vice-President

By ~~M. K. STOUT~~

Its Secretary-Treasurer

(Testimony of F. A. Willard.)

Direct Examination

Q. (By Mr. Smith): Mr. Willard, following the request to bargain in the fall of 1942, did you meet with a committee of the employees association in the fall of '42? A. Yes, sir.

Q. Do you know approximately when?

A. I think it was in the latter part of September.

Q. And do you remember who met with you, who represented the employees association?

A. Well, I know there was George Harlan and Gettle and Pete Drinkard. Could I look at this list?

Trial Examiner Mouritsen: Is that all you can recall without assistance?

The Witness: No, if you give me time I can give them to you. Let's see, there was Stout and Gettle. How many is that we have?

A. (By Mr. Smith): Well, if you can't remember the names of anyone else, can you tell us about what was the substance of the meeting, what they said and what you said?

A. At the first meeting they asked for an increase in [615] wages.

Q. This is in the fall of 1942? A. Yes, sir.

Q. All right.

A. And I asked them to state what they wanted in the way of increase in wages. And they wouldn't say. And after we had tried to get some discussion from them, I made them a proposition, that I would give them a 10 per cent in wages and if the company earned enough to pay a dividend, then we would give them a bonus of 10 per cent.

Q. What did they say to that?

(Testimony of F. A. Willard.)

A. They didn't say anything, they adjourned the meeting and were going to talk it over among themselves.

Q. Then did you meet again?

A. Yes, the next meeting George Harlan came in and he had a written memorandum, and said that the memorandum asked for a straight 20 per cent increase. And he asked for another meeting, he said that is what they wanted. I told them I didn't think it would be necessary to have a meeting because he could tell them I wouldn't give them a 20 per cent increase.

Q. Then what happened?

A. Well, he said he would go back and report to the boys, and said he would let me know about it. And there was some delay there because he thought I was to call another [616] meeting and I was waiting for him to ask for another meeting, and that delayed over into October. And finally he came and asked me if I had decided on a meeting date. I told him, no, I was waiting for him. And then he asked for a date and I told him any time that was convenient to him to have a meeting. And I think it was the following day we had another meeting.

Q. All right. Now, who attended that meeting?

A. It was practically all the employees in the plant then.

Q. Did that include the superintendent?

A. No, Smith was there and Pool was not there.

Q. And tell us what was said in that meeting by the men and by you.

(Testimony of F. A. Willard.)

A. Well, in that last meeting there wasn't much discussion, they asked for the wages that we have in the last contract, and I agreed to it.

Q. That is in the 1942 contract? A. Yes.

Trial Examiner Mouritsen: Board's Exhibit 8?

Mr. Smith: Board's Exhibit 8.

The Witness: Yes.

Q. (By Mr. Smith): And then the 1941 contract was virtually copied with those changes?

A. Yes.

Q. As to wages? [617]

A. Yes, that is right.

Q. Was that the only change in the 1942 contract?

A. Yes, it was. That was the only change.

Q. Now, Mr. Willard, Mr. Wells testified in this hearing that he was a business manager of the Chauffeurs, Teamsters, Helpers, Local 898 of the A. F. of L., and he called at the office of the Holtville Ice Company in the fall of 1941, I believe he said in September. And that he had two discussions with you. Did you ever meet with Wells before?

Mr. Petersen: Mr. Examiner, now I don't like to object but I am going to on the basis that the testimony——

Trial Examiner Mouritsen: It is not correctly stating the testimony that Mr. Wells——

Mr. Petersen: It is not correctly stating the testimony of Mr. Wells, and testifying.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: As I recollect he testified he had met with him once, on cross examination.

Mr. Whitelaw: On cross examination he said once, but on direct he said twice.

Trial Examiner Mouritsen: I think the point was finally cleared up that he left the contract with Mr. Smith.

Q. (By Mr. Smith): Did you have a conversation with Mr. Wells?

A. My recollection is that this man that was here didn't talk at all. The man that was with him did talk. [618]

Q. Do you know the name of the man that was with him? A. No, I do not.

Trial Examiner Mouritsen: Even after hearing it here, don't you know?

The Witness: I think it was Floyd.

Q. (By Mr. Smith): All right. Do you remember about when it was that those two men came over to talk with you?

A. I think it was in September, '41.

Q. Now, can you remember what the spokesman said of the two, and what you said? You can answer that yes or no.

A. Well, they came in and introduced themselves and said they were representing the union. They said they had left a contract there previously and asked me if I had read it, and I told him, no, I hadn't, and they asked me if I would read it, and I said yes, I would. And they said they would like

(Testimony of F. A. Willard.)

to meet with me again, and I said that would be all right with me.

Q. Was there anything more to the conversation?

A. I told them that I couldn't act on it without taking it up with my Board of Directors. After I read it I would take it up and I would be ready to meet with them.

Q. Did either of those men or anyone representing the union ever come back to talk with you?

A. Not that I know of.

Q. Did anyone ever communicate with you from the union, [619] until the letter of January 12, 1941?

A. Yes, I think someone was back, my recollection is Herman Smith told me one of the men was back once after that.

Q. What else did Herman Smith tell you about that?

A. He told me that he had made an appointment, I am not sure whether it was the next day, to meet with them at 3:00 o'clock.

Q. Did you keep the appointment?

A. I did, yes.

Q. Did they keep it? A. No, sir.

Q. Did anyone keep it on behalf of the union?

A. No, I never heard from them from that time until we received the letter.

Q. Of January 12, 1942?

A. Yes, that is right.

(Testimony of F. A. Willard.)

Q. Now, Mr. Willard, when Mr. Wells was on the witness stand he testified that he told you that the Chauffeurs, Teamsters and Helpers, Local 898, A. F. of L. had a majority of your employees. Did he tell you that?

A. No, he never told me that.

Q. Did the other man with him say that in substance? A. No, sir. [620]

Q. (By Mr. Smith): Mr. Willard, during the session yesterday I showed you Ice Company's Exhibit 3, for identification, which you stated was the first draft of the proposed contract presented to you by the Employees Association. Then Board's Exhibit 5 was shown you as the copy of the contract that was finally signed between the Ice Company and the Employees Association. Now, I want to ask you if there were any intermediate written proposals submitted by the Employees Association after that Exhibit 3 was first exhibited to you and before the finished contract was signed.

Mr. Petersen: To which we object, it has already been asked and answered by the witness, and a direct question by the Examiner yesterday. [624]

Trial Examiner Mouritsen: I will overrule the objection, and permit him to answer.

The Witness: My recollection is now there was another one. The boys took this one back to White-law and he drew another one.

Q. (By Mr. Smith): Took which one, do you refer to? A. Exhibit 3.

(Testimony of F. A. Willard.)

Q. Then took that away?

A. That one back to Mr. Whitelaw.

Q. I see. And then did they present to you the one that was typed by Mr. Whitelaw?

A. Yes.

Q. Were there any changes made before that final—Exhibit 5 was actually drawn up and signed?

A. Yes, there was one single change made, in the one that came back from Mr. Whitelaw.

Q. And did that necessitate retyping it again?

A. Yes, it did. There was an error in the rate and that was corrected.

Q. I see. So when you testified yesterday that there was no written proposal between Exhibit 3 and Exhibit 5 you were in error, were you?

A. That is correct, yes, sir.

Q. Now, Mr. Willard, did the State of California file a suit against the Holtville Ice and Cold Storage Company to [625] pay California Retail Sales Tax on the ice manufactured and sold?

A. Yes, sir.

Q. And what was the outcome of that suit?

Trial Examiner Mouritsen: Wait a minute, now.

Mr. Smith: I might explain the materiality.

Trial Examiner Mouritsen: Well, it is merely on the question of what is the best evidence, that would be the question.

Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Read the question.

(Testimony of F. A. Willard.)

(The question was read.)

The Witness: Decided, we had to pay the tax.

Q. (By Mr. Smith): And the company has paid the California retail sales tax on all ice sold since then, has it? A. Yes, sir. [626]

Q. (By Mr. Smith): Mr. Willard, how many other ice companies are there within a radius of 12 miles of Holtville?

A. Nine. There are two in Holtville, three in El Centro, two in Brawley and two in Calexico.

Q. Brawley is more than 12 miles, isn't it?

A. Yes.

Q. How many are there within a radius of 12 miles by the highway?

A. Two in Holtville and the three in El Centro.

Q. Are there any in Calexico?

A. Yes, two in Calexico.

Q. Calexico is more than 12 miles?

A. Yes, it is.

Mr. Ryan: I object to the materiality of this evidence, it has been held time and again by the courts and the National Labor Board cases it is of no concern whether or not a customer could obtain that goods elsewhere, the court doesn't have to go beyond the immediate parties to [627] find out whether or not, in order to avoid a stoppage of interstate commerce operations, the recipient of the services could have gotten them elsewhere.

Trial Examiner Mouritsen: Was that the purpose of it?

(Testimony of F. A. Willard.)

Mr. Smith: In answer to that there are also decisions of the Board if a commodity affects interstate commerce that question should be decided. Now, we propose to show by this testimony there are other ice companies who could have supplied all these shippers without interrupting the flow of vegetable shippers.

Trial Examiner Mouritsen: You would term it within the cases to which Mr. Ryan refers. It has been held that that showing is immaterial. I mean if you could. I recall most recently one of the cases affecting the Gas Company, I think, in the Los Angeles area to the effect that they all had a standby plant, or something like that. It wouldn't make any difference if they didn't receive natural gas, I don't think it would be material. You can put it in your record by means of an offer of proof.

Mr. Petersen: Further, Mr. Examiner, unless Mr. Smith is prepared to show these other ice plants had capacity enough to take care of the increased business, I don't think he should put it in. If we are going to deal in what each of the ice plants has in capacity, I think we will get somewhere. [628]

Trial Examiner Mouritsen: Mr. Smith will probably make that part of his offer of proof.

Mr. Smith: I will offer to prove by this witness that there are four other ice companies manufacturing ice within a radius of 12 miles of Holtville, Imperial County, California, and that if the

(Testimony of F. A. Willard.)

Holtville Ice and Cold Storage Company were to be shut down that that fact would not interrupt the flow of vegetable shipments out of Imperial Valley, because the other four had sufficient capacity to furnish the sheds in Holtville.

Mr. Whitelaw: And immediately, without interruption.

Trial Examiner Mouritsen: Do you want to add that?

Mr. Smith: Yes, immediately, without interruption.

Trial Examiner Mouritsen: I will reject the offer.

Q. (By Mr. Smith): Mr. Willard, how long previous to the time you changed over from Diesel power to electric power had you planned to change to electric power?

A. We had been working on it about a year.

Q. Does the Holtville Ice and Cold Storage Company deliver any ice outside of Imperial County, California?

A. No, sir, not any.

Q. Manufactured in Holtville, sold in Holtville, is that correct?

A. Yes, that is correct.

Q. Witness Harlan testified, he said he was related to [629] Pete Pool's wife. Did you ever know that to be a fact before this trial——

A. No, sir.

Mr. Smith: I think that is all.

Mr. Yeager: I would like to ask some questions.

(Testimony of F. A. Willard.)

Cross Examination

By Mr. Yeager:

Q. Mr. Willard, I think you testified you came back from your vacation about the 20th of September, 1941? A. Yes, sir.

Q. Did you, after you came back, learn about the union activity at your plant?

A. Yes, a few days after that.

Q. And how did you hear that?

A. I walked out through the plant and stopped and talked to the superintendent, Mr. Pool, and in the conversation I asked him how things were going and he said it looked like the plant was going union.

Q. And then it was subsequent to that conversation that you telephoned Mr. Osborne?

A. Yes, sir.

Q. What was your reason for telephoning him?

A. I wanted to find out all I could about it, find out what was doing. Mr. Osborne told me he would be over and see me in a few days. [630]

Q. Did he tell you whether he was aware of what was going on?

Trial Examiner Mouritsen: Wait a minute. Before you leave that let's find out first was that all that he said.

Q. (By Mr. Yeager): Was that all he said?

A. No; I asked him what I could do about it. He told me he knew all about it, and I asked him what I should do about it, and he said, "Don't do anything. I will be over and see you in a few days."

(Testimony of F. A. Willard.)

Q. Did he come over to see you? A. Yes.

Q. When was that, approximately?

A. That was a few days following the telephone conversation.

Q. Still in September?

A. Yes, it must have been. [631]

Q. Now, at this conversation you had with Mr. Osborne when he came to your office, did you directly or by inference request him to do anything about forming an employees union in your plant?

A. No, sir.

Q. (By Mr. Yeager): Was there any discussion at that time concerning who among your men had made application for the A. F. of L.? [634]

The Witness: No, sir. [635]

Q. What was the substance of it? What did you say and what did Mr. Osborne say?

A. I was particularly interested in knowing what I should do, if anything, and Mr. Osborne said that there wasn't anything I could do, and shouldn't do anything. Let nature take its course. He told me that if anything developed that looked serious, he would keep in touch with it and let me know about it.

Q. Did he amplify what he meant by looking serious?

A. Oh, if there should be any disturbance of any kind. [636]

The Witness: I understood if it looked as though there might be some rough work or something about

(Testimony of F. A. Willard.)

to happen or take place, he would let me know about it. [637]

Cross Examination

By Mr. Ryan:

Q. Mr. Willard, you have been operating the Holtville Ice and Cold Storage plant since about 1926, is that right? A. Yes, sir.

Q. And your season begins usually in the latter part of October or the first of November, isn't that right, when you begin filling up your storage tanks with ice? [638]

A. Yes, that is correct.

Q. And about how long is your plant engaged in that particular job of getting a supply on hand and filling up your storage tanks before you actually have to start supplying the vegetable packing customers?

A. Well, we usually try to start in sufficient time to fill our storage by January 1st. Now, the sales start usually a little before January 1st.

Q. To the packing companies? A. Yes.

Q. The packing companies start up the latter part of December?

A. Yes, of course, when they start depends on the crops.

Q. As a rule, that is usually around the latter part of December or the first part of January?

A. Yes.

Q. Then for some time after the vegetable packing customers started to operate, for some time thereafter this supply of ice that you had been stor-

(Testimony of F. A. Willard.)

ing up immediately prior to their beginning holds over, isn't that right, and you are able to keep supplying them partly from your storage tanks and partly from what you are freezing right along?

A. That is correct, we run the plant full capacity all the time, and if the demand exceeds the capacity of the plant we draw that from storage. [639]

Q. Yes. Then, as the vegetable packers get into the height of their season and they begin to draw even more and more, isn't that right, as the season goes along?

A. Well, the peak is usually in February.

Q. In February. Now, up until about February then you can operate with about the same crew of men that you started the plant, isn't that right, and then you have to start putting on extra ones to take care of the extra demand of the packers?

A. Yes, usually put on extra help soon after the season starts. We have to put on extra help on the platform immediately when it starts.

Q. When the vegetable packers start up?

A. Yes.

Q. And how long is that peak season underway that you have to keep some extra help to keep operating, that is, extra help over and above your normal crew?

A. Approximately two weeks.

Q. Two weeks. Then what do you do, do you lay off the extra help again, is that right?

A. Yes.

Q. Sometimes does it run over, they work a little more than two weeks?

(Testimony of F. A. Willard.)

A. Yes, sometimes we have two peaks.

Q. When does the second peak come, if it does come, as a [640] rule, approximately?

A. There is no rule, it takes a combination of the crops and the market to make a second peak.

Q. Now, when you had the Diesel motors operating your plant you usually started with a crew of about four men in the engine room, isn't that right, four men in the engine room? A. Yes.

Q. That is with the Diesel motors?

A. Yes.

Q. Two in the engine maintenance room?

A. Yes.

Q. And five in the can pullers or ice pullers department? A. Yes.

Q. You also call that the tank?

A. Three on the can pulling.

Q. Three? A. Yes.

Q. And three in the storeroom?

A. Yes, there is an extra man comes in there, a relief man.

Q. In the storeroom?

A. Well, he relieves between the storeroom and the tank.

Q. I see. And in the platform and delivery you have about four men, is that right, until you start putting on extra help? That was under the Diesel engines? [641]

A. On the platform we start up with sometimes one driver and one man on the platform.

(Testimony of F. A. Willard.)

Q. Yes.

A. And that increases as the demand increases.

Q. As soon as the vegetable companies start operating you put on more drivers?

A. Yes, that is right.

Q. In 1940, the last year that you operated, at the beginning of 1940-'41 season, the last year you operated with Diesel motors——

Trial Examiner Mouritsen: I don't think this is going to be clear. Why don't you reframe it and get—I think you mean last year they started beginning the vegetable season when they were still using Diesel power.

Mr. Ryan: Yes, the last season.

Q. (By Mr. Ryan): The last season that you started, that would begin around the 1st of November, 1940, would it not?

A. I think so, yes.

Q. And run on through then up to shortly before you started changing over to electric power in 1941?

A. Yes, that is true.

Mr. Ryan: Miss Reporter, will you mark this Board's exhibit next in order.

(The document referred to was marked as Board's Exhibit No. 10, for identification.)

[642]

Mr. Ryan: I show the document marked Board's Exhibit 10 to counsel.

Q. (By Mr. Ryan): Mr. Willard, I show you the document I have had marked as Board's Exhibit 10, which purports to be a payroll of employees

(Testimony of F. A. Willard.)

with which you began your operations in the fall of 1940, at the start of that season which ran up into 1941. That is the crew, is it not, you started your operations with that fall?

A. Well, that says the fall of 1940. The change-over was 1941.

Q. Yes. I am still talking about the Diesel motors. That is when you had the Diesel motors?

A. Yes, I didn't have anything to do with making this up, that evidently is what it is.

Trial Examiner Mouritsen: For the purpose of the record let's have this last season when they operated with Diesel engines the 1940-1941 season.

Mr. Ryan: All right.

Q. (By Mr. Ryan): Beginning in the fall of 1940 and running into 1941, up into 1941.

A. Yes.

Q. So the men listed on Board's Exhibit 10 are the regular employees, were the normal, regular employees with which you operated that year under the Diesel power, is that right?

A. Yes. [643]

Q. And then, of course, during that season, later on when the business got heavy and the packers, vegetable packers started to operate at their peak season it was necessary for you to put on a few extra people in addition to this crew, isn't that right?

A. Yes.

Q. And for a short period of time?

A. Yes.

(Testimony of F. A. Willard.)

Q. However, the men that you started that season with in the engine room, M. K. Stout, H. G. Miller, E. S. Jones and H. T. Pool, for example, had been with you for several seasons?

A. Yes.

Q. Your normal, regular crew, were considered as your regular crew? A. Yes.

Q. Then in your engine room M. Wooldridge and L. C. Hart, had, of course, been with you for several seasons? A. Yes.

Q. And part of your regular, normal crew?

A. Yes.

Q. In your can pulling department here G. Harlan, S. Hogue, H. Fruhn, A. Standifer and Perry Blankenship were also part of your regular crew? A. Yes. [644]

Trial Examiner Mouritsen: That is, they had worked for you a number of seasons before.

The Witness: Standifer, I think, was maybe on one season before that. The others were all old men.

Q. (By Mr. Ryan): In order to keep the record straight, Mr. Willard, instead of Standifer it was Blankenship you had reference to?

A. Blankenship, that is right.

Q. He had begun, I think, the record will show, it was May of that same year, 1940?

A. Yes, it was.

Q. In other words, he had been in your employ since May of the spring before? A. Yes.

Q. And then in your storeroom, Mr. Willard,

(Testimony of F. A. Willard.)

you had three men, L. Gettle, R. H. Ireland and Bailey Pool. That is Bailey Pool, I believe.

A. Yes.

Q. And they were your regulars in that department, is that right?

A. I wouldn't say Bailey Pool was a regular, he had worked off and on for the company.

Q. The other two were regulars?

A. Yes, they had been on several years.

Q. Now, E. Broderick, Tom Herring, G. P. Drinkard, and [645] H. C. Fredenburg were the regular ones you had had for several years up to that time on the platform and delivery?

A. What was the first name?

Q. E. Broderick.

A. He is not an old man, the other three were.

Q. The other three were? A. Yes.

Q. Herring, Drinkard and Fredenburg were regular employees? A. Yes.

Q. And M. Ballard had been working for you quite a long time as garage mechanic?

A. Yes.

Q. Now, it had been the practice of the company, had it not, Mr. Willard, to attempt to give these men, this regular crew, work, as much as possible over and beyond your ice operating season? A. That is true, yes, sir.

Q. And by saving maintenance work you were able to give them a couple of extra months, sometimes, and keep them over a month or two after the ice business had actually ceased, isn't that right?

(Testimony of F. A. Willard.)

A. Yes, sometimes carry some of them all through the summer.

Q. But the regular crew, to hold them together, you usually tried to give them some work after the close of the season? [646]

A. That is true.

Q. These extra men you had to put on for a couple of weeks or so during the season, you didn't have occasion or work enough to keep them on, and as soon as the extra peak work was done, you would lay them off, isn't that true?

A. That is true.

Q. If they worked for you again the next season that was more or less an accident, if they happened to be there you would put them on, and if they weren't there you didn't feel obligated to put them on? A. Yes. [647]

Q. (By Mr. Ryan): Now, at the end of the ice season in—at the end of the season which began in the fall of 1940 and ran up into the spring of 1941, at the end of that season M. K. Stout was kept on doing maintenance work, was he not? A. Yes.

Q. And H. G. Miller worked for a time, did he not? A. Yes, he did.

Q. E. S. Jones, did he work any?

A. He quit there somewhere along that time, I don't know just when.

Q. He quit some time in the summer or early spring, is that right?

(Testimony of F. A. Willard.)

A. I think that is correct.

Q. H. T. Pool, he did some maintenance work?

A. Yes. [648]

Q. And M. Wooldridge, can you tell us what about him?

A. Well, he quit early in the summer, just when, I wouldn't say, he got a job up on the Coast and left.

Q. L. C. Hart continued to work on the maintenance work at the end of the season?

A. Yes.

Q. G. Harlan continued to work on the maintenance?

A. No, Harlan didn't work in the summer.

Q. He didn't? A. No.

Q. S. Hogue?

Mr. Whitelaw: Mr. Ryan, you say maintenance work, do you mean the change-over work, or what do you mean?

Mr. Ryan: I mean whatever they had to do around the plant after the ice season was stopped.

Mr. Whitelaw: The maintenance theretofore had been on the Diesels. It is rather confusing in the record. It was in the season of 1941 the change-over, as I understand the situation it was a change-over process and not maintenance.

Mr. Ryan: Maybe I am not properly designating it as maintenance. I think we understand what it is.

Mr. Whitelaw: The record won't show, it was extra work.

(Testimony of F. A. Willard.)

Mr. Ryan: That is what I have been referring to, [649] painting and little odd jobs.

The Witness: That is what I understood it to be; that is correct.

Q. (By Mr. Ryan): Had S. Hogue worked any beyond the vegetable ice season, into the repair work that summer of 1941?

A. I don't recall,—no, he didn't work all through the summer. I don't recall just when he quit.

Q. Did he quit? A. Yes.

Q. H. Fruhn and A. Standifer and P. Blankenship, all three of those men worked on some of the repair work and odd jobs after the vegetable ice season was over and the clear ice season?

A. I can't say about that. I know they worked for the contractor and the storage.

Q. L. Gettle and R. H. Ireland, did they do any work that summer, speaking now of the summer of 1941?

Mr. Smith: I am going to object to the question. Mr. Willard wasn't here, Herman Smith is here with his book showing who did work, the payroll would be the best evidence.

Trial Examiner Mouritsen: That has been my impression. As I recall, I mentioned that fact yesterday about something that you went into.

Mr. Smith: That is right. [650]

Trial Examiner Mouritsen: And I think I was overruled and was informed this man had the knowledge. Although I think there is some merit

(Testimony of F. A. Willard.)

to what you say, however, I will permit Mr. Ryan to go into it.

Mr. Smith: If he knows.

Q. (By Mr. Ryan): Do you know?

A. I couldn't say whether they worked or not.

Q. E. Broderick, do you know whether or not he worked? A. No, I don't.

Q. Do you know he didn't work or you don't know whether he worked?

A. I don't know whether he worked.

Q. Tom Herring and G. P. Drinkard, do you know whether they worked?

A. They both worked.

Q. H. C. Fredenburg worked also, did he not?

A. I think he worked for the contractor.

Q. Did M. Ballard work?

A. Oh, yes. [651]

Q. (By Mr. Ryan): How many employees did you contemplate it would take you to operate normally under the electric power, without taking into consideration those peak periods when you would need extra help?

A. Just the normal help. When we were just operating the plant and the storeroom, it would take three men in the storeroom and three men on the tanks and a relief man.

Q. Well, you haven't made allowance for any delivery men [654] as yet. When I consider normal operations, I am considering you are selling this ice and delivering it to the vegetable companies.

(Testimony of F. A. Willard.)

A. You can't say you have a normal operation when your delivering is up one day and down the next.

Q. You have a certain crew you are operating with at that time, is that right?

A. In the plant, yes, not in the storeroom.

Q. Well, you had a certain group of drivers over there that you had kept regularly, isn't that right?

A. Yes.

Q. Fredenburg?

A. Yes, that is true.

Q. Tom Herring and G. P. Drinkard?

A. Those boys usually work in the storeroom until we are ready to start the trucks operating.

Q. Well, when you had the trucks operating, as a rule, under the Diesel motor power, you had about 22 men working, isn't that right?

A. I couldn't say that.

Trial Examiner Mouritsen: Let me ask you: As a general rule by the 15th of January in each year you usually had your—had put on all of the regular drivers or your customary crew of drivers?

A. No, that is not so. [655]

Trial Examiner Mouritsen: The 15th of January in each year, that is not the case?

The Witness: No, we put the drivers on as the demand increases.

Trial Examiner Mouritsen: Well, then, did you usually put on additional drivers after the 15th of January in each year?

(Testimony of F. A. Willard.)

The Witness: Yes, I would say beginning the 15th of January there is a gradual increase of drivers.

Trial Examiner Mouritsen: Now, that gradual increase does that ever exceed one or two additional drivers after the 15th of January?

The Witness: Yes, it would. Maybe I could explain that and make it a little clearer. The only thing that—around the plant that operates continually at the same rate, you might say, is the manufacture of ice.

Trial Examiner Mouritsen: That is about after when, the 1st of November?

The Witness: That is from the time we start until we shut the plant down.

Trial Examiner Mouritsen: Well then, the storeroom might get more drivers, you might get more. And where else?

The Witness: We operate continuously from the time we start until about around Christmas time the ice is going into storage, that is all it is doing. Now, most [656] of the shippers try to get out a car before Christmas but any shipments they make are very small and probably one driver will handle everything up to sometimes early in January. And early in January shipments begin to pick up and more drivers put on and more men put in the storeroom bringing ice out. Does that clear it up?

Trial Examiner Mouritsen: Yes.

(Testimony of F. A. Willard.)

Mr. Ryan: I don't believe I have offered Board's Exhibit 10 in evidence. I do at this time.

Mr. Smith: I believe we better have Mr. Smith verify what it is. There is one thing——

Mr. Ryan: Mr. Willard says he didn't make it?

Trial Examiner Mouritsen: Yes.

The Witness: There is no date of the payroll. If it is a payroll, I should say it ought to be dated.

Trial Examiner Mouritsen: It says "Employees that began the operations of the plant in the fall of 1940."

The Witness: You called it a payroll.

Trial Examiner Mouritsen: Let's have Mr. Smith clear that up.

Q. (By Mr. Ryan): Now, after you had installed your electric equipment and were about to begin your—begin to operate under electric power, in the fall of 1941, you did not select H. C. Fredenburg to return to continue [657] in the employ of the company? A. No.

Q. He had worked for four years as a driver, isn't that right, delivery man for the company up to that time? A. I think so, yes.

Q. He was in the platform and delivery department. Then after he was let go, you had working in the platform delivery department S. Harlan, W. Faulkner and Charles Hefner. Is that right?

Mr. Whitelaw: Might the witness be afforded the same opportunity of the record that Mr. Ryan

(Testimony of F. A. Willard.)

has in front of him? I would say it is confusing to the witness.

Mr. Ryan: Company's Exhibit 1-A.

Q. (By Mr. Ryan): I show you Respondent Ice Company's Exhibit 1-B.

Mr. Whitelaw: What is that?

Mr. Ryan: Payroll for period ending January 15, 1942.

Mr. Smith: Is that one I gave you this morning?

Mr. Petersen: No.

Mr. Smith: That is 1-A.

Mr. Whitelaw: 1-B. What is that marked, is that 1-B or 1-A?

Mr. Ryan: 1-B.

May I have the last question?

(The question was read.) [658]

Q. (By Mr. Ryan): And G. P. Drinkard also?

A. Yes, that is correct.

Q. Neither S. Harlan nor W. Faulkner nor Charles Hefner had had as much seniority as Fredenburg, were with the company as long as Fredenburg had been, isn't that right?

A. That is correct.

Q. Now, with respect to Herman Fruhn, he had been employed by the company since April, 1929, and worked all of his time as an ice puller.

Trial Examiner Mouritsen: Is that correct?

Q. (By Mr. Ryan): Is that right?

(Testimony of F. A. Willard.)

A. That is correct, yes, sir.

Q. And was there——

Mr. Whitelaw: Just a minute. Mr. Examiner, might I inquire through Mr. Ryan why this is all gone into? It was testified by each one of the witnesses, Mr. Fruhn and all the rest of them. Why go over this same thing and clutter up the record with further questions? It is self-evident and in the record.

Trial Examiner Mouritsen: I presume it is preliminary, directing the witness' attention to it. It is permissible. I will permit it. I will ask counsel to restrict it as much as possible, it is covering the same ground.

Q. (By Mr. Ryan): Now, Mr. Fruhn was not put back—after his employment was terminated by the company,—M. K. Stout, G. Harlan, S. Hogue and L. Gettle worked as ice pullers, isn't that right? A. That is correct, yes.

Q. It is a fact, isn't it, Mr. Fruhn had more seniority with the company than any of those four men? A. Yes. [660]

Q. (By Mr. Ryan): L. Gettle, who was put in as an ice puller after Fruhn's termination, had not even worked in that department before, had he, hadn't he been working in the storeroom the previous year?

A. No, I think he had been working in the tank before.

Q. The payroll will show that, anyway?

(Testimony of F. A. Willard.)

A. Yes.

Mr. Whitelaw: We ask to have the record—testimony of Mr. Ryan stricken from the record unless he wants to be sworn. The payroll doesn't show that, anyway.

Mr. Ryan: I said the payroll would show that.

Trial Examiner Mouritsen: Gentlemen, gentlemen, let's get along. That doesn't help us any. That isn't testimony.

Q. (By Mr. Ryan): With respect to Herman Pool, at the time you were making your selections as to who was to work beginning the season of 1941 through 1942, you then had two engine room men to consider and that was M. K. Stout and Herman T. Pool, isn't that right? The other two men had left the employ of the company previously, E. S. Jones and——

Mr. Whitelaw: Are you referring to Exhibit 10?

Trial Examiner Mouritsen: Let him complete his question.

Q. (By Mr. Ryan): ——and H. G. Miller?

A. I don't understand that question.

Mr. Smith: Pardon me, the witness does not have that Exhibit 10 before him. Do you mind if I give him my copy [661] of Board's Exhibit 10?

Mr. Ryan: Here's the one that is marked 10 for identification.

The Witness: I don't understand the question.

(The question was read.)

(Testimony of F. A. Willard.)

The Witness: Yes, that is correct.

Q. (By Mr. Ryan): And you took M. K. Stout and put him in the tank room? A. Yes.

Q. As an ice puller?

A. We offered him a job, and he took it.

Q. Now, Herman T. Pool, had much more seniority with the company—Herman T. Pool had worked as an ice puller in previous years for the company, had he not, prior to becoming an engineer? A. Yes.

Q. He had more seniority with the company than G. Harlan, S. Hogue, and L. Gettle, did he not?

Mr. Smith: Objected to as immaterial.

Q. (By Mr. Ryan): Who worked in the ice room after his employment terminated?

Trial Examiner Mouritsen: Overrule the objection. Answer the question.

The Witness: I couldn't say as to that.

Q. (By Mr. Ryan): He also had more seniority with the [662] company than R. H. Ireland, W. T. Morgan, A. O'Neal, Oran Stephens and Dorman Stewart?

Mr. Smith: May my objection be continued to all this line of questioning?

Trial Examiner Mouritsen: Yes, you may continue it. It is overruled.

Q. (By Mr. Ryan): He had worked there previously longer than those?

A. I think probably that is correct. [663]

(Testimony of F. A. Willard.)

Q. (By Mr. Ryan): I believe you stated that you had heard about some union activity at the plant when you came back from your vacation trip?

A. Yes, sir. [665]

Q. And you got that from Mr. Pool, Pete Pool?

A. Yes, sir, Pete Pool.

Q. What did Pete Pool say to you in that regard?

A. He said, "I guess the plant has gone union."

Q. Was anything else said between you and Mr. Pool on that occasion; did you say anything to him?

A. Not in that regard, no.

Q. What did you next do, after hearing that, did you call up Mr. Osborne?

A. Yes.

Q. You called him up at the office of the Associated Farmers here in the court house, El Centro?

A. Yes.

Q. What did you say to him?

A. I told him I had heard there was some union activity around the plant and asked him if he knew anything about it. He said yes, he knew all about it. And I asked him what, if anything, I should do and he said I should do nothing, he would be over in a day or *day* and see me.

Q. He did come over in a day or two?

A. Yes.

Q. You met him in the office, did you?

A. Yes.

Q. And did you have a conversation with him on that occasion?

A. Yes, sir. [666]

(Testimony of F. A. Willard.)

Q. How long did you talk to him, about?

A. Oh, just a very few minutes.

Q. And what was the conversation, what did he say and what did you say?

A. I asked him if he—again if he knew anything about what was going on, and he said yes, there was an effort being made to unionize all the ice companies in the Valley. And I asked him what I should do about it, if anything. He said I shouldn't do anything, that I shouldn't talk to any of the men, and just keep out of it entirely.

Q. Did you say something to him about because of his expert knowledge he should do something about it? A. No.

Q. Didn't you say to him about making some sort of investigation on it and letting you know about it?

A. No, he told me, he volunteered the information that if he should hear of anything that was out of line he would get in touch with me.

Q. After learning of this union activity from Pete Pool, why did you call Mr. Osborne?

Mr. Smith: Object to the reason why he called him as being argumentative. The question was what was done.

Trial Examiner Mouritsen: I will overrule the objection. I will permit him to give his reason.

The Witness: I knew the Associated Farmers were in [667] pretty close contact with things of that kind and I thought if anyone knew anything about it they would.

(Testimony of F. A. Willard.)

Q. (By Mr. Ryan): Then how long was it after that that Mr. Osborne came in to your office, as I understood you to testify that he did, and introduced this bargaining committee of the Association to you, approximately how long?

A. Well, that would be purely a guess. I would say two or three weeks.

Q. Now, did you hear Mr. Osborne testify?

A. Yes.

Q. To the effect that he sat in on one of the negotiations between the Association and the company regarding wages?

A. No, he didn't set in on any negotiations regarding wages. He came in with the bargaining committee, introduced them and right after that left.

Q. When was the first time you were approached by the Association or any representative of this Employees Association?

A. I couldn't give you a definite date on that.

Q. Who, at first, approached you to make any requests upon you in behalf of the Employees Association?

A. Mr. Harlan.

Q. Mr. George Harlan?

A. Yes.

Q. And he came in by himself, did he, into your office? [668]

A. Yes.

Q. What time of day was that?

A. Well, I think probably that was in the morning.

Q. About what time in the morning?

A. I couldn't say.

(Testimony of F. A. Willard.)

Q. Well, would it be some time between 9:00 o'clock in the morning and noon—can you fix it some time like that?

Mr. Smith: We object. The witness says he doesn't know.

Trial Examiner Mouritsen: Overruled.

The Witness: I couldn't say. He came in the morning, to the best of my recollection.

Q. (By Mr. Ryan): What took place on that occasion when Mr. Osborne came into your office?

A. As I recall the time when Mr. Harlan came in by himself it was to request a date for a meeting of the bargaining committee.

Q. Did he have anything with him?

A. I don't recall that he did, no.

Q. You don't recall he gave you any proposals?

A. Not the time I am thinking of, no.

Q. Then he requested you, I understood you to say, for a meeting to meet with the bargaining committee of the Association?

A. Yes. [669]

Q. What did you say?

A. I told him I would be glad to meet with them any time.

Q. And about how long after that was it that you had occasion to meet with the bargaining committee for the first time or any representative of the union?

A. Probably a day or two following.

Q. A day or two following? A. Yes.

Q. About when was that, was that in the month of October?

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: Which one do you mean, when Harlan came in alone or when the others came in?

Mr. Ryan: Yes.

Q. (By Mr. Ryan): When Harlan first came in, would you say that was sometime in October?

A. I imagine it must have been in October.

Q. You think it was toward the latter part or the middle of October or the first of October?

A. Well, I couldn't say about that.

Q. Did I understand you to say it was a day or so after he had been in that you then met with some bargaining committee of the Employees Association?

A. Yes.

Q. Who did you meet on that occasion?

A. There was Stout, Harlan, and Drinkard, I think, maybe Gettle came in, too. [670]

Q. Was Tom Herring present?

A. I don't recall that Tom Herring was present, he might have been.

Q. Did they have any written document to give you on that occasion?

A. At the first meeting I don't think they did have any written document.

Q. Was that the occasion when Hugh Osborne came in with them?

A. No.—it might have been that meeting. My recollection is we met first and the result of the meeting was I suggested that they have their program they were talking about drawn up in writing. And then we had a following meeting to discuss that.

(Testimony of F. A. Willard.)

Q. At the time that Mr. Osborne came in, he introduced the bargaining committee to you and said the bargaining committee of the Employees Association wanted to bargain with you, isn't that right? A. That is right.

Q. Was that the first bargaining meeting you had? A. Yes.

Q. Just what did he say to you in that regard, Mr. Osborne?

A. My recollection now is that he told me that the boys had formed a union and this was the bargaining committee and they wanted to discuss certain things with me, and then [671] he left.

Q. Then did he indicate what those certain things were? A. No.

Q. What did you say in reply to Mr. Osborne on that occasion, if anything?

A. I don't know that I replied to Mr. Osborne. I told the boys I would be glad to discuss anything with them.

Q. Then did you proceed to have a discussion with the committee in your office?

A. Yes, we had a short discussion that first meeting.

Q. What was the subject matter?

A. Well, they wanted to discuss wages and vacations. There was a discussion of a relief man.

Q. Did you make any requests of them for—make any demands upon them for anything at all, or make any requests of them? A. Did I?

Q. Yes. A. No, sir.

(Testimony of F. A. Willard.)

Q. You listened to their proposals and then discussed them with them, is that right?

A. Yes.

Q. Regarding wages, hours and vacations?

A. Yes.

Q. Anything else? [672]

A. I don't recall of anything else now?

Q. About how long did that meeting last?

A. It was a very short meeting.

Q. About how long?

A. Oh, not over a half or three-quarters of an hour.

Q. What time of day did that meeting occur?

A. I think that was in the morning, too.

Q. Was any understanding reached at that meeting that you would meet again? A. Yes.

Q. Did they have anything in writing at that meeting, any proposals in writing?

A. No, not the first meeting; no.

Q. Then when were arrangements made to meet again at a specific time?

A. Not a specific date, no.

Q. Was that the understanding?

A. I asked them to have their subject we had been discussing, the things they wanted to cover—drawn up in writing, so that we could keep track of them and follow them up. And they adjourned with the idea of doing that.

Q. When was the next time you heard from the Association in regard to any further business?

A. Probably two or three days later.

(Testimony of F. A. Willard.)

Q. What was the nature of that contact? [673]

A. At that time they brought in the proposed agreement, written agreement.

Q. Who brought it in?

A. The Bargaining committee.

Q. Composed of the same people you have mentioned before? A. Yes.

Q. Was George Harlan on that committee?

A. Yes.

Q. Mr. Willard, I show you Respondent Ice Company's Exhibit 3, and ask you to tell me whether or not that was what was brought in to you by the committee?

A. My recollection is that was what we started negotiations with, they brought in.

Q. Now, this Respondent's Exhibit 3 is composed of three typewritten pages and there are two other pages attached to it, which are in writing, handwriting. Can you tell me at the time they brought this in, this committee brought in the proposals, whether or not the two pages in handwriting were also attached? A. Yes, they were.

Q. They were? A. Yes.

Q. Both of them? A. I think so, yes.

Q. Do you know in whose handwriting this writing, the [674] first page, which is a white page, in handwriting, whose that is?

A. That is Merl Stout's.

Q. Merl Stout's writing? A. Yes.

Trial Examiner Mouritsen: Is he M. K. Stout?

The Witness: M. K., yes.

(Testimony of F. A. Willard.)

Q. Do you know in whose handwriting the yellow page is written? A. Mr. Whitelaw.

Q. Mr. Whitelaw? A. Yes.

Q. Do you know at what time he wrote the matter on this yellow page which is part of Respondent Ice Company's Exhibit 3?

A. My recollection is that that came just as it is, just as it is bound, they brought it.

Q. Did it also have the paragraph contained on that yellow page, it is in pen, and there are some other notations and words in pencil. Do you know whether they were also on the yellow page when it was brought to you?

A. No, I put those on.

Q. You put those on there? A. Yes.

Q. What were the circumstances of your putting the writing [675] on there in pencil, on the yellow page?

A. For discussion of those subjects?

Q. Do you know who helped the—do you know if anyone helped the employees Association prepare that document? A. No, I don't.

Q. How did you know that Mr. Whitelaw wrote that material on the yellow page?

A. He told me he did.

Trial Examiner Mouritsen: Who did?

The Witness: Mr. Whitelaw.

Trial Examiner Mouritsen: Did you know it at the time that it was Mr. Whitelaw's writing?

The Witness: No.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: Did you recognize it?

The Witness: No.

Trial Examiner Mouritsen: Or did you learn that afterward?

The Witness: Yes.

Q. (By Mr. Ryan): Then you proceeded to have a discussion regarding the material in Respondent Ice Company's Exhibit 3, did you, during this meeting? A. Yes, sir.

Q. At the end of that conference, was there any understanding between the parties, yourself and these employees' representatives, that you would meet again? [676] A. Yes.

Q. Did you give them any directions or suggestions or proposals as to what to do in the meantime, after this meeting was over, until you met again?

A. I suggested again that they have it redrafted covering the things we had agreed upon.

Q. And do you know whether or not they did?

A. Yes, they did.

Q. Do you know where they had it done?

A. No, I do not.

Q. When did you next meet with the representatives of this Employees Association?

A. Well, it was a short time following this meeting.

Q. A matter of a few days?

A. Yes. I know that these conferences went over November 1st, because we—that was one of the

(Testimony of F. A. Willard.)

things we discussed, and I told them that whatever decisions we came to we would date back to November 1st.

Q. Over how long a period did these last, approximately? From the time you first began negotiating until the contract was agreed upon?

A. I would say along the middle of November.

Q. I mean, approximately how many weeks elapsed between the beginning of the first negotiations and the final negotiation, which resulted in the contract? [677]

A. About two or three weeks.

Q. Now, you told them after this meeting that you have told us about, that you suggested they go out and have this Respondent Ice Company's Exhibit 3 redrafted, is that right? A. Yes.

Q. Now, you met with them thereafter in a few days? A. Yes.

Q. And at that occasion did they have any other document? A. Yes, they did.

Q. Do you know where that document is now?

A. No, I do not.

Q. Was that the document that was finally signed?

A. No. There was one more change made in that last document they submitted.

Q. Was that the final meeting, final negotiation meeting? A. I believe it was, yes.

Q. I mean after they took this Exhibit 3 and had it redrafted and brought it in to you, was that the final negotiation meeting?

(Testimony of F. A. Willard.)

A. No, there was one more meeting when we discussed that one change in the rate.

Q. The wage rate?

A. The wage rate.

Q. So you had two meetings then on the redraft that they brought in to you of this Exhibit 3, Respondent Ice Company's [678] Exhibit 3?

A. Two meetings on the redraft?

Q. Yes.

A. There was—you figure the meeting with this one the first one?

A. As I understand it, after you discussed this Exhibit 3, told them to go out and get a redraft, which you say they did, then you had a meeting which was three or four days after this, after you had told them to have this redrafted. Then you discussed that redraft with them at the meeting, is that right? A. Yes.

Q. And you discussed it again at another meeting after that, is that right?

A. No, that is not right, they brought this redraft it. My recollection is they brought this redraft in and there was this question of rate, and that was in error, and that was the only thing that was to be changed, and that was all.

Q. Did you reach a conclusion at that meeting to go ahead and agree—did you reach an agreement then on a contract? A. Yes.

Q. Then who had the contract drawn up?

A. There was a matter of changing—just chang-

(Testimony of F. A. Willard.)

ing the price and they asked if we couldn't do that. That was the only change made in the contract.

[679]

Q. The Employees Committee asked if you couldn't do that?

A. Yes, and I don't know how it came about, but, anyway, that contract was taken to a public stenographer in Holtville and copied.

Q. Didn't you have anyone in your office who could do that work? A. Oh, yes.

Q. How did it happen you did not have it done in your office? A. Advised not to.

Q. By whom? A. Mr. Whitelaw.

Q. R. B. Whitelaw? A. Yes.

Q. Had you been in contact with him from time to time during these negotiations?

A. I don't recall that I was.

Q. When did you get the advice from him not to do that, not to draft that yourself?

A. Well, he advised that early in the—before we had made any negotiations, not to have anything to do with it.

Q. Well, approximately when was it that you got in touch with him and got these instructions from Mr. R. B. Whitelaw?

A. Well, that was soon after I had talked with Mr. Osborne.

Q. And what was the nature of your contact with Mr. R. B. [680] Whitelaw? Did you go to see him or call him on the telephone or did he come to see you, or how did it happen?

(Testimony of F. A. Willard.)

A. No, I went over to see him.

Q. You went up to his law office to see him?

A. Yes.

Q. Was anyone with you, just you and Mr. Whitelaw present?

A. I don't recall whether Mr. Smith was with me or whether I was alone.

Q. Mr. Herman Smith, you mean?

A. Yes; probably Mr. Smith was with me.

Q. Will you tell us what conversation you had at that time with Mr. R. B. Whitelaw?

A. We had the same conversation that I had with Mr. Osborne. I asked him what I should do and if—if anything, and he said I shouldn't do anything, shouldn't even discuss it with my employees.

Q. How long did you confer with Mr. Whitelaw on that occasion, about?

A. Probably half, three-quarters of an hour.

Q. Well, did he say anything about your drafting this contract at that time? A. No.

Q. Well then, when did you get the instructions from him not to draft the contract?

A. I didn't get any instructions from him not to draft it. [681]

Q. I thought you just testified that you got instructions from him not to draft the contract yourself in your own office?

A. No, I didn't testify to that. I said he advised me not to do anything, not even to talk with the employees.

(Testimony of F. A. Willard.)

Q. At that time was Mr. R. B. Whitelaw retained by you as your lawyer? A. No.

Q. Was he being retained by you?

A. He was then, yes.

Q. At that particular meeting?

A. Yes. I went in to see Mr. Smith, who is my attorney, and he advised me to go to Whitelaw because he was familiar with that line of work.

Q. What line of work?

A. Matters dealing with the unions and National Labor Relations Board matters.

Q. You say you took the contract to a public stenographer to have it drafted?

A. No, I didn't say I took it.

Q. I mean the company. You had it sent there?

A. My recollection is Herman took it up there.

Q. Herman Smith? A. Yes.

Q. To a public stenographer? [682]

A. Yes.

Q. Here in El Centro? A. No, Holtville.

Q. Holtville? A. Yes.

Q. Who paid the stenographer for that work?

A. I don't know whether the company paid for it or not.

Q. Who is the principal owner of the Holtville Ice and Cold Storage Company? A. I am.

Q. Who are the Board of Directors?

A. How is that?

Q. Who are the Board of Directors?

Mr. Smith: You mean the present board?

Q. (By Mr. Ryan): Who are they now? And I will find out later on who they were before.

(Testimony of F. A. Willard.)

A. Mr. Dave Vencill, Herman Smith, Lena Bridenstein and myself.

Q. Who was this Lena Bridenstein?

A. Bridenstein, yes.

Q. What was the name of the girl—the stenographer that you took the contract to be redrafted by?

A. Lena Bridenstein.

Q. At that time she was a director of the company?

A. Yes. [683]

Trial Examiner Mouritsen: They own about one share of stock apiece, is that the set-up, or do they own a substantial part of it?

The Witness: One of them owns a substantial part.

Trial Examiner Mouritsen: Which one?

The Witness: Dave Vencill.

Q. (By Mr. Ryan): Where does he live?

A. Holtville.

Q. Does he take an active part in the operation of the business?

A. No.

Q. You and Herman Smith are the only two who are actively engaged in the plant in the operation of the business?

A. That is correct, yes.

Trial Examiner Mouritsen: Do you own the substantial majority of the stock, yourself?

The Witness: About 65 per cent.

Q. (By Mr. Ryan): There was at least one occasion, was there not, Mr. Willard, during the negotiations between the company and this Employees Association wherein a considerable number of the employees was present, is that right?

A. Yes.

(Testimony of F. A. Willard.)

Q. Who were they that were present?

A. Well, there was Stout, Harlan, Gettle, Drinkard, Tom Herring, Simon Hogue. [684]

Q. Was Morgan present?

A. I believe he was, yes. O'Neal was present, too.

Q. Is that all you can remember?

A. Yes.

Q. Or is that all that were present?

A. That is all I recall right now.

Q. Mr. Willard, I show you Board's Exhibit 4 in evidence and direct your attention to the date of the contribution there November, 1941, \$150, contributed by the Holtville Ice and Cold Storage Company to the Associated Farmers. Did you give that money to Mr. Osborne?

A. I couldn't say.

Q. You don't know how you made that contribution? A. No.

Q. What time in November was it made, do you know? A. I couldn't say that.

Q. November, 1941? A. Yes.

Q. Do you know how you happened to make it right at that particular time?

A. No, I don't. We make them every year. 1936 we made one in November.

Mr. Smith: You made one in December of '39 also, did you not?

The Witness: Yes. [685]

Q. Now, you stated that you notified Mr. Herman

(Testimony of F. A. Willard.)

Smith to let Mr. Davis go early in June before you went on your vacation, substantially that?

A. Yes.

Q. And did you state that immediately upon your return you again talked to Mr. Smith and told him to let Mr. Davis go? A. Yes.

Q. When did you tell him that?

A. Well, it was soon after I returned, the middle of September, about the 20th of September.

Q. Did Mr. Smith then immediately let Mr. Davis go in accordance with your instructions?

A. I think within a reasonable time, yes.

Q. What do you consider a reasonable time?

Mr. Whitelaw: Objected to as argumentative.

Trial Examiner Mouritsen: I will overrule the objection.

The Witness: I would say within a few days.

Q. (By Mr. Petersen): A few days.

A. I recall he was paid up to the 1st of the month, if that is any information to you. [692]

Trial Examiner Mouritsen: Did you pay him in advance?

The Witness: Yes.

Q. (By Mr. Petersen): When you told Mr. Smith—I believe you heard Mr. Davis' testimony in Mr. Smith's cross examination on the basis there was a great deal more office work during the off season in 1941 than there was in other years, did you hear that here in this hearing room?

A. Yes.

(Testimony of F. A. Willard.)

Q. Did you consider the extra amount of office work that would be necessary for Mr. Davis to do when you asked Mr. Smith to let him go that summer?

A. Well, I don't know where the extra amount of work was in the office.

Q. Did you put on—or did the company put on an additional employee in the office to take care of that extra office work? A. No, sir.

Q. Was Mr. Garber employed in the office previous to the summer of 1941?

A. My recollection is he came to the office in the spring of 1941.

Q. Did he work full time during the spring of 1941?

A. No, he came first—first he worked—he was going to school and he worked in the afternoons, I am not sure he worked every afternoon. [693]

Q. Did Mr. Garber work continuously during the summer months, July, August and September of 1941?

A. Well, I couldn't say as to that. Mr. Smith can give you that testimony.

Q. To the best of your recollection.

A. I wasn't there at the time.

Q. Was Mr. Garber still employed by the company in the office after 1941 season started, the latter part of October?

A. He was employed in the office and on the platform, too, worked both places.

(Testimony of F. A. Willard.)

Q. He was retained in the employ of the company?
A. Yes.

Q. Working both in the office and on the platform?
A. Yes.

Q. The same type of work that Mr. Davis had previously performed?

A. He did some of it, yes.

Q. What was the difference between the type of work that Mr. Garber did and the type of work that Mr. Davis did, both in the office and on the platform, to the best of your knowledge?

A. There was a lot of the work that Davis did we didn't figure was necessary, and it was discontinued.

Q. What work was that?

A. He made up summaries of the vegetable ice for the [694] season and tabulations of that kind.

Q. That was during the off season you made those up?
A. Yes.

Q. During the working season, at the time you were shipping ice to the vegetable sheds, what was the difference in the type of work that Mr. Garber was doing at the commencement of the 1941 shipping season, and the work previously performed by Mr. Davis?

Mr. Smith: Just a minute. I believe I will object to that in view of the fact it has been intimated Davis is not included in this unit, it would be immaterial.

Trial Examiner Mouritsen: He is included in the

(Testimony of F. A. Willard.)

charge that he was discriminatorily discharged. I will overrule the objection.

The Witness: You better get that information from Mr. Smith.

Q. (By Mr. Petersen): To the best of your knowledge what was the difference? What did you see what the difference was, yourself?

A. Well, after Davis left about the only work that I recall that was done in the office that Davis had been previously doing was making the payroll; Garber did that work.

Q. He did the same work in the office?

A. Yes. [695]

Q. Now, on the platform, what did Mr. Garber do after the season started and what did Mr. Davis do?

A. He would wait on the clear ice customers.

Q. Who is that "he", Mr. Garber?

A. Garber. Davis did that once in a while.

Q. What other work did Mr. Garber do during the 1941-'42 shipping season, after they began to distribute ice to the vegetable packing sheds?

A. Well, he made up the daily reports of the vegetable ice sales.

Q. Had Mr. Davis previously done that?

A. No.

Q. Who made up the reports for the vegetable ice sales previously? A. Garber did.

Q. Before Garber—I mean the year before Garber was employed. Who made them up in 1940-'41 season?

(Testimony of F. A. Willard.)

A. I don't know whether Herman Smith made them up at that time or whether it was the man on ahead of Garber.

Q. I believe you testified that Mr. Garber wasn't employed before May, 1941, or thereabouts, to the best of your recollection? A. Yes.

Q. Was there another man there before Mr. Garber, who was taking care of the platform? [696]

A. Yes.

Q. Who was that?

A. Well, I don't recall his name now.

Q. And previously, during the shipping season, you had including Mr. Herman Smith in the office, three clerical employees each year during the shipping season, is that right?

Mr. Smith: Mr. Davis, Mr. Garber and Mr. Garber's predecessor?

The Witness: That is true.

Q. (By Mr. Petersen): Do you still have three men during the shipping season? A. Yes, sir.

Q. Has Mr. Garber been put on full time work since Mr. Davis' services terminated with the company.

A. Well, I don't recall just when he was put on full time service.

Q. Did he work full time during the off season in 1942 from the close of the shipping season to the commencement of the operations the next year?

A. To the best of my recollection he was on full time during the domestic ice season, that would be through the hot weather in the summer.

(Testimony of F. A. Willard.)

Q. Which was until about the last of September or October? A. Yes. [697]

Q. I believe you testified that Mr. Smith had told you that Mr. Herman Pool was getting some breaks in the work down at the plant, is that right?

A. Yes.

Q. Did you investigate that matter, yourself?

A. Did what?

Q. Did you investigate that matter, yourself?

A. No, I didn't.

Q. Did you attempt to see whether Mr. Pool was working a shift the same as the other engineers of eight hours per day?

A. Oh, I knew that, yes.

Q. Now, in the operation of the engine room was it a practice for the engineers each to work a shift in the engine room? A. Yes.

Q. Did those shifts rotate or one man on days and one man on nights and one in the middle in between, all the time? A. They rotated.

Q. They rotated the shifts? A. Yes.

Q. Did you point out to Mr. Smith that with rotating [700] shifts and each man taking a shift there could be no differentiation in the amount of time each employee put in?

A. No, I didn't discuss it with Mr. Smith at all.

Q. You took Mr. Smith's statement as authority then?

A. I didn't take any action on it at all.

Q. Mr. Herman Fruhn, you stated that he monkeyed around with the machinery a little bit?

(Testimony of F. A. Willard.)

A. Yes.

Q. Substantially, I don't believe you used that word. Had that been going on a great many years or was it just a new thing at your place?

A. That was the nature of the man.

Q. I am asking did he do that over a long period of time? A. Yes.

Q. And you had re-employed Mr. Fruhn each year irrespective of his shortcomings in that regard? A. Yes.

Q. Did you or did you not notify any of your supervisors to notify Mr. Fruhn at the close of the 1941 shipping season that his services would no longer be required? A. No, sir.

Q. Was it a general practice to hire Mr. Fruhn back each year when the season started again?

A. It had been up to that time, yes.

Q. I believe you testified you met with Mr. Pete Pool [701] and drew up your list of employees that you wanted for the coming season? A. Yes.

Q. Was that your common practice each year?

A. No.

Q. Why was the change made in 1941, the commencement of the '41-'42 shipping season that you met with Mr. Pete Pool to discuss who was to come back and who wasn't?

A. Because we had to reduce the number of men, the employees and the selection of who we would drop off and who we would keep on.

Q. Did you put on any new employees in 1941-'42 season who hadn't been employed previously?

(Testimony of F. A. Willard.)

A. Oh, yes, we do that every year.

Q. When you drew up the list of who was to come back and who was not to come back, did you figure out just how many men were to be eliminated?

A. No, we figured out the number of men we wanted to start the plant with and put those men to work. [702]

Q. (By Mr. Petersen): Did Mr. Pete Pool say anything about the type of union that was coming into the plant? A. No, sir, he did not.

Q. What did Mr. Pool say to you?

A. He said, "I guess the plant has gone union." [703]

Q. Did you say anything about the plant—to Mr. Pool about the plant going union then?

A. No, sir.

Q. I believe you testified that you didn't expect any returns from the Associated Farmers through your membership? A. That is right.

Q. Do you attend any Associated Farmers' meetings, general meetings? A. No.

Q. And I believe you subsequently testified that there were certain troubles about the truck drivers between here and Los Angeles, didn't you?

A. Yes.

Q. And did you testify that——

Mr. Smith: Pardon me. Subsequent? Prior to this.

Mr. Petersen: It was subsequent——

Q. (By Mr. Petersen): Did you testify that you

(Testimony of F. A. Willard.)

talked to Mr. Osborne concerning getting fuel oil through? A. Yes, I did.

Q. When did you do that?

A. That was——

Mr. Yeager: When did he testify or when——

Mr. Petersen: No.

Q. (By Mr. Petersen): When did that occur that you talked to Mr. Osborne? [704]

Trial Examiner Mouritsen: When did it occur with reference to the time you joined the Associated Farmers, before or after?

The Witness: It was at that time.

Q. (By Mr. Petersen): It was at that time?

A. Yes.

Q. What did Mr. Osborne say to you then in 1936, I believe you joined, is that right? Did you join the Associated Farmers in 1936?

A. Yes. He was soliciting membership for the Associated Farmers.

Q. What did Mr. Osborne say to you about getting the fuel oil through?

A. He asked me if I was having any trouble getting fuel oil through. First he asked me how my fuel oil was coming down and I told him by truck. And he asked me if I was having any trouble getting it down. I told him, no, we haven't, so far.

Q. What further transpired?

A. He said, "If you do have any trouble we can get it through for you. If necessary we can go to the city and bring it down."

(Testimony of F. A. Willard.)

Q. In other words, Mr. Osborne did offer you some returns on behalf of the Associated Farmers if it became necessary to you? [705]

A. Yes, that is true, in that particular.

Mr. Ryan: May I ask a question?

Mr. Petersen: Certainly.

Q. (By Mr. Ryan): You said they would do that even if it were necessary to go to the city. What city do you have reference to?

A. Los Angeles.

Q. You were getting your fuel oil at the time from Los Angeles? A. Yes.

Q. Being brought in here on trucks, as I understand? A. Yes.

Cross Examination

Q. (By Mr. Petersen): Now, you stated the first meeting you had with the Employees Association committee as a whole Mr. Osborne came in and introduced them as the committee for the Employees Association, is that right?

A. The bargaining committee.

Trial Examiner Mouritsen: I think this has been covered.

Mr. Petersen: I am going to ask just a foundation, I have to go back.

Trial Examiner Mouritsen: All right.

Q. (By Mr. Petersen): Did you know the men on this committee previous to Mr. Osborne's introducing you to them? [706]

A. Yes, I knew them.

(Testimony of F. A. Willard.)

Q. Did Mr. Osborne say anything further than just introducing the committee and saying, "This is the committee from the Employees Association"?

A. Well, he said they wanted to meet with me and negotiate with me, negotiate with me or bargain with me.

Q. Did you then ask Mr. Osborne and the committee for any showing concerning who they represented at that meeting?

A. I presume I did, I don't recall it now.

Mr. Ryan: I move to strike the answer unless he—What he presumes, Mr. Examiner.

Trial Examiner Mouritsen: I will leave it in.

Q. (By Mr. Petersen): What did they show you, if anything, that you remember to show they had the bargaining rights?

A. They didn't show me anything.

Q. You just accepted their word they represented the Employees Association as the truth, and started bargaining with them?

Mr. Whitelaw: Objected to as argumentative, Mr. Examiner; this has all been gone into several times.

Mr. Petersen: It never has.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

Read the question.

(The question was read.) [707]

The Witness: Yes, that is true. [708]

Q. (By Mr. Petersen): You heard Mr. Wells'

(Testimony of F. A. Willard.)

testimony, that he called on you about the 28th of October, didn't you? A. Yes.

Trial Examiner Mouritsen: 1941?

Mr. Petersen: 1941.

Q. (By Mr. Petersen): Was that approximately the time he called on you, to the best of your knowledge? A. So far as I know, yes. [715]

Q. Did you state that the Employees Association, through Mr. Harlan, had presented some proposals to you in the middle of October, 1941?

A. We must have been negotiating then, because the contract was made, was dated November 1st. And negotiations weren't completed until after November 1st, and dated back.

Q. But you had been negotiating previous to November 1st? A. Yes.

Q. Then you stated you couldn't discuss the proposal of the Teamsters Union until you had looked it over and conferred with the Board of Directors?

A. That is correct. [716]

Cross Examination

Q. (By Mr. Whitelaw): When you came to me for advice you came to me concerning the general situation of what an employer could do with respect to any union activity in your plant?

A. Yes, sir.

Q. And you were advised by me, after discussion, that you could do nothing, neither could you nor your supervisory personnel take any part in the union activity? [725]

(Testimony of F. A. Willard.)

The Witness: Yes, that is the object of the advice and the instructions I received.

Mr. Whitelaw: That is all. [726]

Trial Examiner Mouritsen: Mr. Willard, is the work in the storeroom of a heavier or more difficult nature than that of can pulling?

The Witness: Yes, it is, it is more undesirable work, less desirable work. [727]

Q. Did you know that Mr. Whitelaw had prepared that first proposal?

A. I don't know that he did.

Q. You since ascertained that was true?

A. Yes.

Mr. Whitelaw: Haven't you since ascertained that since we came into this hearing, Mr. Willard?

The Witness: Yes, sir, that is true.

Cross Examination

By Mr. Petersen:

Q. Mr. Willard, did you inform your employees they could join a union or not join a union?

Mr. Whitelaw: Objected to as indefinite and uncertain as to time and place.

Trial Examiner Mouritsen: It wouldn't be objectionable upon that ground if it were at any time. [729]

Mr. Whitelaw: We withdraw our objection.

Q. (By Mr. Petersen): Did you?

A. Yes.

Q. How did you notify the employees?

A. It was at one of their meetings.

(Testimony of F. A. Willard.)

Q. Whose meetings?

A. The Employees Association meetings. They asked me—the way they did it, they asked me if they could join both unions; I told them they could join any union or stay away from any union.

Q. That was after the Employees Association was formed that you told your employees that?

A. Yes.

Q. Not previous to the Employees Association being formed? A. No.

Mr. Petersen: That is all.

Redirect Examination

By Mr. Smith:

Q. Mr. Willard, do you recall that shortly prior to your first meeting with the Employees Association whether or not Herman Smith ever told you that Tom Herring was in the office to see you?

A. Yes.

Q. And did Herman Smith tell you what Tom Herring wanted to see you about?

A. Yes. [730]

Q. What did he say?

A. He said he wanted to talk over the matter of forming a union, company union, Employees Association.

Q. What did you tell Herman Smith?

A. I told him I couldn't discuss it with him.

Q. Did you say anything else that you now recall?

A. Well, I don't recall Herman—at that time I was in the garage and Herman phoned me.

(Testimony of F. A. Willard.)

Q. I see.

A. And asked—told me that Tom was in there and wanted to discuss this with me. And I told him to tell Herman I would like to do it, but I couldn't do it.

Q. Told Herman?

A. Told Herman to tell Tom I couldn't discuss it with him.

Mr. Petersen: Can you fix a time?

Q. (By Mr. Smith): Can you fix a time on that, Mr. Willard?

A. It was evidently before they had formed their association, while negotiations were going on; it must have been some time the middle part of October.

Mr. Smith: That is all. [731]

PETE POOL

called as a witness by and on behalf of Respondent Holtville Ice and Cold Storage Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your full name, please?

A. Pete Pool.

Q. Mr. Pool, when did you first commence working for the Holtville Ice and Cold Storage Company?

A. I think it was in 1928.

(Testimony of Pete Pool.)

Q. Have you worked continuously since then?

A. No, I haven't.

Q. How much of the time have you been off?

A. Oh, I would say about 18 months.

Q. You spent more than ten years working for the company, have you?

A. Yes, sir.

Q. When did you become foreman or superintendent?

A. 1939, I think it was.

Q. And as superintendent did you employ men and lay men off?

A. I did.

Q. For what department?

A. For the production end.

Q. What did that include?

A. Well, that includes storeroom, tank men, and the engine [733] room men.

Q. Are you the one that assigned men to the engine room since you have been superintendent?

A. Yes, sir.

Q. Now, Mr. Pool, going to the summer of 1941, there has been lots of testimony about changing over from Diesel to electric power. I am not going to take time to go into that with you. Did that change-over make any difference in the kind or character of employees you needed in the production end to carry out your part of the program?

A. Yes, in a way it did, and in a way it didn't.

Q. Well, explain.

A. Well, in a way it did. I needed pretty experienced men because the plant was tore all to pieces, and I kept the men on, the old men that

(Testimony of Pete Pool.)

I thought would take care of it, preserve the pieces.

Q. Well, what class of employees were you able to get along without when you made the change-over?

A. Well, I could have got along without any practically.

Q. What class of employees did you do away with when you changed over?

A. I done away with can pullers, storeroom men.

Q. Wait a minute. You don't understand my question.

Trial Examiner Mouritsen: He means did you eliminate the engine room employees. [734]

Q. (By Mr. Smith): When you changed over from Diesel power to electric power, did you have any use for the engine room men, as a type or as a class?

A. Yes, sir.

Q. You didn't have any engine room for them to run?

A. No, I didn't.

Q. What do you mean by your answer then?

A. Well, to be frank with you, when we was changing over the most of these men worked under the supervision of a York man, not under me; they worked under a York man.

Q. Now, Pete, when you had Diesel engines, how many engine room operators did you have?

A. I had four in '41, when we closed the summer of '41, and one relief.

(Testimony of Pete Pool.)

Q. All right. Did you have any maintenance men? A. Yes, sir, I had two.

Q. Two, all right. Would there be any work for those men to do in the new set-up with the electric power, similar to what they had been doing when you had the Diesels?

A. No, sir, not any.

Q. All right. So when the change-over was made, that permitted you to do away with some employees, did it? A. It did.

Q. How many?

A. Well, it permitted me to do away with seven, I think. [735]

Q. All right. Did you, as a matter of fact then, assign some of those seven men to other work in the plant? A. I did.

Q. When the change-over was made?

A. Yes.

Q. And on what basis did you select the crew that was to commence the—in the fall of '41 to make ice?

Mr. Ryan: I think that calls for a conclusion.

Mr. Petersen: We object to that, it calls for a conclusion.

Mr. Ryan: Explain the details he went through.

Trial Examiner Mouritsen: Well, I will permit him to answer. He said what was the basis. The factors, he considered, I assume.

Mr. Smith: That is right.

Q. (By Mr. Smith): What were the factors

(Testimony of Pete Pool.)

you considered in choosing the crew to start the plant with in the fall of '41?

Mr. Petersen: We object on the basis that there has been no showing Pete Pool did the choosing of who had been there.

Trial Examiner Mouritsen: Did you participate in the selection of employees who were to commence the plant in the fall of 1941?

The Witness: I did, sir. [736]

Trial Examiner Mouritsen: Did you participate or did you confer with Mr. Willard regarding that?

The Witness: Why, yes, me and him——

Trial Examiner Mouritsen: Not with anyone else? Was Mr. Willard the only one with whom you conferred regarding the employees who were to start the new season at the end of 1941?

The Witness: That is right.

Q. (By Mr. Smith): What factors did you take into consideration in choosing which men you desired to use to start the plant with in '41?

A. I didn't get that last question.

Q. Well, on what basis did you pick the men you started the plant with?

A. I picked the men, what I thought was the best suitable for the job.

Q. Now, did you, Mr. Pool, lay off men during the summer of '41, before Mr. Willard returned?

A. I did.

Q. Can you name over some that you laid off prior to his return?

(Testimony of Pete Pool.)

A. I laid off Simon Hogue, Lloyd Gettle, Stanley Harlan, Dick Ireland, Herman Fruhn.

Trial Examiner Mouritsen: Was that the man who was here the other day and testified? [737]

The Witness: Yes, sir. Perry Blankenship.

Q. (By Mr. Smith): Is that all?

A. That is all I can remember.

Q. And is it possible there are others whose names you do not recall? A. Yes, there are.

Q. Now, did you just use your own judgment in laying those men off? A. I did, sir.

Q. When Mr. Willard left for his vacation, did he give you any instructions regarding laying men off? A. Yes, sir.

Q. What did he tell you about that?

A. He told me when I got through with the men, what men I didn't want, to lay them off, if I didn't have any work for them.

Q. And do you remember the approximate dates you laid off those various men?

A. I wouldn't be positive, though, I think it was in July, around about the 10th or the 15th of July.

Q. Now, how then did you determine when to lay off each man, what made you make up your mind about the date for laying off each individual man?

A. I didn't make up my mind for the date of laying off each individual man. I only laid them off when I didn't [738] have any work for them,

(Testimony of Pete Pool.)

happened to come that time of the year, why, no work, why, I laid them off.

Q. I see. Now, the witness Blankenship said that he worked from May, 1940, to some time in July, 1940, and when he was laid off he was told to come back in the fall by you.

Mr. Petersen: I am going to object——

Q. (By Mr. Smith): Is that right?

Mr. Petersen:——to this, as an entirely leading question. He can ask about Mr. Blankenship.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: I didn't get the question.

(The question was read.)

The Witness: No, not in 1940-1941; 1940 I did tell him to come back.

Q. (By Mr. Smith): Was there anything said to him when you laid him off in 1941, July of 1941?

A. No, sir.

Q. Did he ask you whether or not he was to come back?

A. No.

Q. Had he asked you the previous year?

A. He did.

Q. Why didn't you say something to him, whether he was or was not to come back in the fall of '41?

A. Well, the time I laid him off I knew I couldn't use all [739] the men I was laying off, when we started up in 1941 in the fall, is the reason I didn't say anything to him.

(Testimony of Pete Pool.)

Q. Now, did you ever tell him, in substance, "I don't think the union will ever make a success of it"?

Mr. Petersen: To which we are again going to object, it is very leading and suggestive.

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Ryan: That is proper.

Mr. Smith: That is proper.

Trial Examiner Mouritsen: I am glad we are almost unanimous.

Mr. Ryan: I didn't mean to say anything. It sort of came out; I guess I was thinking out loud.

(The question was read.)

The Witness: Yes, I did.

Q. (By Mr. Smith): Did you say anything more to him?

A. Well, I talked to Perry Blankenship a number of times.

Q. Now, regarding the witness Fredenburg. Were you the one that laid him off?

A. No, sir, I did not lay him off.

Q. He testified that you asked him a few days after September 26, 1941, if he had joined the union. And he said he told you, "Yes." Did you ask him if he had joined the union? [740]

A. Well, I couldn't answer that question. I might have, I wouldn't say I did or I wouldn't say I didn't.

(Testimony of Pete Pool.)

Q. All right. If you did, did you communicate his answer to either Mr. Willard or Herman Smith?

A. No, I didn't.

Q. Did you ever tell Mr. Willard or Herman Smith that Fredenburg had or had not joined the union?

A. I did not.

Mr. Petersen: I move to strike the last question and answer, the witness had previously testified he didn't know whether he talked to Mr. Fredenburg.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Smith): Now, this witness Blankenship also said that about the time the plant started up in October of 1941, that he asked you for a job, and you never answered him. Do you recall whether or not he did ask you for a job?

A. No, I don't.

Q. Do you recall anything he asked you you didn't answer him?

A. No.

Q. Now, do you know the witness Fruhn, Henry Fruhn—or Herman Fruhn?

A. Sure, I know the witness.

Q. How many years have you known him?

A. Oh, I would say about 13 years. [741]

Q. And he was a crane operator most of that time, was he not?

A. He were.

Q. What kind of a crane operator was he?

A. Well, he was a good crane operator and a bad crane operator.

Q. Explain what you mean.

(Testimony of Pete Pool.)

A. He could pull his ice all right, though he was always fooling with the crane.

Q. What do you mean, "fooling with the crane"?

A. Well, the crane hoist has a brake on it, adjustment, and he was always changing the adjustment on the brakes on the crane and getting them to where it wouldn't hold or where you couldn't stop the crane, the brakes on it. [742]

In other words, a crane is just like a watch, as long as you leave it alone when it is running good, it is all right.

Q. Well, what effect did his fooling with the crane have on the crane?

Mr. Ryan: I object to that as a conclusion, calling for a conclusion.

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Smith: This man is the superintendent of the plant.

The Witness: Well, sometimes, why, you would have to call a man out to fix it, readjust the crane.

Q. (By Mr. Smith): Well, did his crane get out of adjustment any more than the other cranes?

A. It did.

Mr. Ryan: Object to that conclusion.

Trial Examiner Mouritsen: Overrule the objection. Answer the question.

The Witness: Yes, it did.

Q. (By Mr. Smith): How much more than the others?

(Testimony of Pete Pool.)

A. Well, to be frank, why, he was about the only man that it got out of adjustment on.

Q. Well, why was he not selected to commence work in the fall of '41?

Mr. Ryan: I object to that as calling for a conclusion. He can tell what he did by way of deciding what to do. I think it calls for a conclusion of this witness. [743]

Trial Examiner Mouritsen: I will overrule the objection.

You can go into it on cross examination. Answer the question.

The Witness: Answer that question?

Trial Examiner Mouritsen: Yes.

The Witness: When I selected the men I didn't want him to pull ice, and I figured he couldn't take care of the job in the store room.

Q. (By Mr. Smith): So you left him off?

A. I let him off.

Q. Now about the witness Lester Hart. Pete, what work did Lester Hart do up until the time his services were terminated?

A. Well, he was counted as a machinist, he done Diesel work, and a little electrician work, a little lathe work and a little work on sheds.

Q. All right. Now, has anyone ever been employed at the Holtville Ice Company since his services were dispensed with, to take his place?

A. No, sir.

Q. Who has been doing the mechanical work he formerly did?

(Testimony of Pete Pool.)

A. Well, I have been doing it myself, small jobs, the other mechanical work, big jobs, we send it out to do it, such as electric motors, such as that; Joe Bush does that.

Mr. Ryan: Mr. Smith, I don't want to interrupt. I think it would be well to find out who Joe Bush is at this point. [744]

Q. (By Mr. Smith): Who is Joe Bush?

A. He is an electrician here in El Centro, a contractor, I presume.

Q. Does he have a store?

A. He has a store.

Q. Shop?

A. A store and a shop in El Centro.

Q. Does all kinds of electrical work?

A. Yes.

Q. Does he have a number of employees?

A. He does.

Q. Has the Holtville Ice Company ever equipped its plant to do that big electrical work?

A. No, sir.

Q. But you did the repair work when you had the Diesels, is that correct? A. We did.

Q. Including overhauling of the motors?

A. No, we didn't have any motors to overhaul, when we had the Diesels, generally the electric driven off the Diesels; we sent those to Los Angeles.

Q. The electric motors?

(Testimony of Pete Pool.)

A. Yes, to have them repaired, and I think Joe Bush repaired some at that time.

Q. Who did the mechanical work on the Diesels, though? [745]

A. Well, Lester Hart done the mechanical work on the Diesels.

Q. All right. Well now, has there been any change, Mr. Pool, in the last few years in the amount of maintenance and repair work the ice company has done on the various packing sheds?

A. Yes, there has.

Q. What has the change been?

A. Well, for the last four years we have been trying to get the packing companies to do their own work, and each year it is less.

Q. Less what?

A. Less work at the packing sheds.

Q. Done by whom?

A. Done by the packing sheds. We mighty seldom do any work for them at all.

Q. You say less work done by the packing sheds or less work done by the ice company?

A. Less work done by the ice company.

Q. Who does whatever the ice company does do now at the packing sheds?

A. Well, I do the most of it.

Q. What does it consist of?

A. Putting in crusher teeth, sharpening crusher teeth, ice crushers.

Q. Did you hear the witness Hart testify? Mr. Hart, did you hear him testify? [746]

(Testimony of Pete Pool.)

A. I did.

Q. Well now, some time after September 26th, did you have a conversation with him regarding the fact that he had made application for a union?

A. I did.

Q. He said that you asked him, "Why didn't you take me, what are you trying to do, blackball me?"

A. I did.

Q. And did you tell him you would like to join, too?

A. Well, as I remember, I did.

Q. Did you mean it?

A. Certainly.

Q. And then he testified that when Mr. Willard came back, that he, Hart, had a conversation with you when he came down one day and he asked you how Mr. Willard took it, or something to that effect, about the men joining the union, and you told him, "Mr. Willard is sure mad." Now, did you say that in those words?

A. Well, I don't remember; not exactly in those words maybe.

Q. What is your best recollection of what you did say to him?

A. Well, the best recollection, I said to him, I told him—he came in one morning a few days after Mr. Willard had come back, that Mr. Willard was mad that morning.

Q. Now, did Mr. Willard make any reply to you when you told [747] him the men had gone union?

A. He did not, sir.

Q. Did he tell you he was mad?

(Testimony of Pete Pool.)

A. No, sir.

Q. What made you say he was mad then?

A. Well, when I told him that I thought all the men had went union, he didn't give any answer and turned around and walked off and left me, and I presumed he was mad.

Q. So you are just drawing your own opinion on that? A. Yes, sir.

Q. Is Mr. Willard a very talkative man around the plant? A. No, he isn't.

Q. Walks off without answering lots of times, doesn't he?

Mr. Ryan: I object to that.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Yes, he does.

Q. (By Mr. Smith): Now, regarding your brother, Herman Pool. He testified that you laid him off about October 1st.

Mr. Petersen: To which we would like a correction. I think the date was October 8th.

Trial Examiner Mouritsen: Well, wait a minute.

Mr. Smith: I thought it was the 3rd.

Trial Examiner Mouritsen: Around that time, it doesn't matter so much. [748]

Q. (By Mr. Smith): I think he testified on October 1st you told him to go on his vacation; is that correct? A. I did.

Q. And he testified that he told you on September 27th, the night after he had been—the mor-

(Testimony of Pete Pool.)

ning after he had been over to El Centro, he had signed an application with the union the night before. Did he tell you that? A. He did.

Q. Now, after he told you that, did you tell either Herman Smith or Mr. Willard what he had said? A. No, I didn't.

Q. Did you tell Mr. Herman Mr. Willard could get plenty of non-union men to operate the plant?

A. I don't have no recollection of it.

Mr. Ryan: Pardon me. Who is this man you are talking about?

Mr. Smith: Herman Pool, his brother.

Q. (By Mr. Smith): Did you tell Herman that Mr. Willard told you there would be no more relatives working at the plant? A. I did.

Mr. Petersen: Let's fix the date.

The Witness: Well, I couldn't say the exact date, though it was in October some time.

Mr. Petersen: Find out whether he was on his vacation.

Q. (By Mr. Smith): Was he on his vacation at the time?

A. Yes, he was on his vacation at the time.

[749]

Q. What did he say?

A. He told me, he said that was all right, he was looking for a job when he found that one.

Q. Did he ever apply for a job after that?

A. No, sir.

Q. Now, the witness Standifer said that you laid

(Testimony of Pete Pool.)

him off on October 3, 1941, at *at* time when he was painting. Is that correct?

A. That is correct, sir.

Q. He said he was painting on a wall?

A. He were.

Q. State whether or not he had finished the painting that you had instructed him to do.

A. He did, sir.

Q. Did anyone do any more painting on that wall after he left? A. No, sir.

Q. You might tell now what part of the wall you were painting?

A. Well, sir, he was painting around the front end of the engine room, around the time clock.

Q. Had you shown him what part of the wall to paint?

A. No, I only told him to paint the wall up by the time clock.

Q. I see. Did you have any available work for him to do at the time you laid him off? [750]

A. No, sir.

Q. Now, did you have a conversation with Henry Miller some time after he had signed up for the—made application for the union?

A. I did.

Q. When and where was the conversation?

A. The conversation, I think, was made the next day after I talked to Hart, the next morning, in the bathroom. He told me he had joined the union.

Q. Mr. Miller?

(Testimony of Pete Pool.)

A. Mr. Miller did. And I don't know his exact words. I told him I thought it was a good thing, I wouldn't mind joining the union myself. He said being as I was a plant superintendent, why, they wouldn't take me into the union.

Q. Then when you made your list to start the gang in the fall of '41, did you put him on the list to reemploy? A. I did, sir.

Q. Or call back? A. Yes.

Q. And did you, yourself, do anything to try to get him back? A. I did.

Q. What did you do?

A. I phoned his residence.

Q. Who did you talk with? A. His wife.

[751]

Q. What conversation did you have?

A. Well, I phoned her up and asked her for Mr. Miller, and she said he wasn't there, had went to Los Angeles, and I told her I wanted him to go to work. And she said she thought he had already went to work. I told her would she relay the message to him, and she said she would.

Q. Did you ever hear from her or from him after that? A. I did not.

Q. Now, when you made up your list to start, did you pay any attention at all to the fact that those—that some had made application to join the Chauffeurs, Teamsters and Helpers, Local 898, of the A. F. of L.?

Mr. Ryan: I object to that as calling for a self-serving declaration.

(Testimony of Pete Pool.)

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: No, none whatever.

Q. (By Mr. Smith): Did you have any objection if they did join the union, Pete?

A. I did not.

Mr. Ryan: I object to——

Mr. Petersen: May we again have a date fixed for the making up of the list?

Q. (By Mr. Smith): Pete, do you know when you made up the list of the men you were to pick when you started the plant? [752]

A. No, not exactly. It was—I would say sometime between the 15th and the 1st of October. Sometime in that period, in between there, those 15 days.

Mr. Petersen: Of what month, of October? 15th and 30th of October?

The Witness: Between those dates.

Trial Examiner Mouritsen: Do you mean the 15th and 30th or 15th and 1st of October?

The Witness: From the 15th until the 1st of October——

Trial Examiner Mouritsen: 15th of October to the 1st of November, or from the 1st of October to the 15th of October?

The Witness: 15th of October to the 1st of November.

Q. (By Mr. Smith): Now, tell us just exactly how that was done, did you and Mr. Willard get together some place?

(Testimony of Pete Pool.)

A. Well, if I remember right, he called me in the office.

Q. All right. Tell us just exactly what you did and said there.

A. Well, he told me, asked me was I about ready to start up the plant operations, and I told him, no, I hadn't got it ready yet. Well, he said he wanted to start up as soon as we could, that we had to lay some of the men off, and he thought he would call me in and pick the men with me.

Q. All right. Go ahead, tell what you said and what he said.

A. Well, we talked on, and one thing he told me that I shouldn't work none of my relatives there. I couldn't, in other [753] words, he made it very plain that none of my relatives was supposed to be working there. He said it caused ill feelings, he never said why. And he talked over—he asked me did I want some men, did I think that would be a good place for them. I don't remember the men's names exactly; to some men I said, yes. To some I said no. He asked me what men I wanted. I picked some men I wanted, I told him I thought would be good at certain jobs.

Q. Did you write their names down on a piece of paper or anything? A. No, we did not.

Q. You knew them so well you could remember them? A. Yes, sir.

Q. Was there any conversation at all between you and Mr. Willard as to whether any of the men had or had not joined the union?

(Testimony of Pete Pool.)

A. None whatever.

Q. Did he select any names he wanted to come back?

A. Well, I tell you, I couldn't say right off-hand.

Q. Well, you say H. G. Miller was on the list to be called back?

A. I think H. G. Miller was the first man he mentioned.

Q. That he wanted? A. That he wanted.

Q. Well, who selected M. K. Stout? [754]

A. I did.

Q. Who selected Tom Herring?

A. Well, Tom Herring didn't go to work under me.

Q. He wasn't under you? A. No, sir.

Q. Who selected G. P. Drinkard?

A. He wasn't under me—no, wait, I will take that back. I did that.

Q. You selected Drinkard? A. I did.

Mr. Smith: I think those are all the questions I have with this witness.

Mr. Whitelaw: No questions.

Cross Examination

Q. (By Mr. Ryan): Mr. Pool, when you were sitting there in the office with Mr. Willard selecting men to be brought back, what group of men were you considering, what group of men were you picking in your mind as you talked it over?

A. Well, I was picking from a group of men

(Testimony of Pete Pool.)

that the whole group of men had worked there in the spring of 1941.

Q. And could you list them for us?

A. Well,—

Mr. Smith: Give him a list.

The Witness: It has been so long.

Q. (By Mr. Ryan): If you saw a payroll for that time, could [755] you pick them out?

Mr. Smith: I have a list here.

Mr. Ryan: This isn't in evidence, is it?

Mr. Smith: No, it is just a list of names. He could refer to it.

The Witness: Now the question?

Mr. Smith: The witness has never seen that chart there.

Mr. Ryan: I will let him look at a chart. I suppose I better—do you want it marked as an exhibit?

Mr. Smith: That is all right.

(Thereupon the document referred to was marked as Respondent Ice Company's Exhibit 5, for identification.)

Q. (By Mr. Ryan): When you and Mr. Willard were discussing this situation about taking men back with the idea in mind to operate under the electric power, did you take into consideration how many you would need?

A. How many we would need?

Q. Yes. A. Yes, we did.

Q. Not just to get it started, but to operate it after you got it started? A. Yes.

(Testimony of Pete Pool.)

Q. What was the figure you arrived at?

A. Well, the figure we arrived at was seven men.

Q. That is just for these two departments, that doesn't take [756] in drivers and delivery men.

A. I didn't discuss the drivers. I have nothing to do with the drivers.

Q. You can look at this document that has been marked for identification. I will ask you what group of men you were picking from, to name the ones that were in the group that you were actually picking from. Are some on that payroll that were in that group? You can indicate that.

A. The group I was actually picking from was the production end, the engine room crew and the tank crew and the store room crew.

Q. And who were those men? Can you name them? Start in with the engine room crew.

Mr. Smith: You can refer to the list, if you want to.

Trial Examiner Mouritsen: Why don't you give him the ones of the year before that sets them out?

Mr. Smith: That was the list there.

Trial Examiner Mouritsen: I know, but it hasn't it according to departments.

Mr. Ryan: It hasn't them according to department, and it is very confusing.

The Witness: I think I can remember. I will make a stab at it. Starting with the engine room in the spring of 1941, for operators, was Eddie Jones, Henry Miller, Herman Pool, Merl Stout. [757]

(Testimony of Pete Pool.)

Trial Examiner Mouritsen: That is M. K. Stout, isn't it?

The Witness: Yes. The relief operator was Art Standifer. Now, along in the winter of 1941 we made another change in the engine room. I think some new law went into effect, then we put on one more man as operator.

Q. (By Mr. Ryan): When was that?

A. In the winter and spring of 1941, same year, if I remember correctly.

Trial Examiner Mouritsen: That was while you were still operating with Diesel?

The Witness: That is while we were still operating with Diesels, put another man to operate part of the time on Diesels and relief, too, on the can tank.

Mr. Smith: Who was he?

The Witness: Perry Blankenship and Marion Wooldridge was machinist.

Q. (By Mr. Ryan): Wooldridge?

A. Yes, sir. Lester Hart was a machinist. That completes the engine room. The tank crew was George Harlan, Lloyd Gettle, and also Perry Blankenship come in there, split. Also Stanley Harlan, he come in, and Herman Fruhn.

Q. Is that all?

A. That completes it. That completes the tank crew.

Mr. Smith: Please let the record show the witness is doing this from memory, not referring to

(Testimony of Pete Pool.)

any paper, although [758] he has a right to refer to the record.

The Witness: We will go to the storeroom man. Now, those men, I can't remember all of those men because they quit and go. In the storeroom, Simon Hougue was one of the storeroom men, Dick Ireland, Dan O'Neal, Charley Hefner and I think Dub Hefner.

Q. (By Mr. Ryan): How about your brother Bailey Pool, where was he working?

A. He was working in the storeroom; Bailey Pool.

Q. Does that take care of it all?

A. That takes care of about all of the men that had shifts.

Q. That were considered as regular men?

A. Yes, sir.

Q. All right. By the time you got around to meeting with Mr. Willard in the office to decide what men to pick out, Jones had already quit the employ of the company? A. He had.

Q. Wasn't being considered, was he?

A. No, sir.

Q. And Wooldridge, had he not already quit?

A. He had already quit, sir.

Q. So he wasn't being considered?

A. He wasn't being considered.

Q. And S. Harlan, up to the time you—up to this time when you and Mr. Willard were sitting down considering which [759] men to put back, he

(Testimony of Pete Pool.)

had not been, in fact, a regular employee of the company, he had been an extra man?

Trial Examiner Mouritsen: Just a minute. That is one question.

Mr. Smith: Object to that as calling for a conclusion of the witness.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Well, to the best of my knowledge he had put in about three seasons there.

Q. (By Mr. Ryan): Did Dan O'Neal or D. O'Neal, was he being considered?

A. Yes, sir.

Q. Had he worked as a regular employee before that for any length of time?

A. Well, off and on for about eight or ten years.

Q. Hadn't you fired him several times?

A. No, he had quit.

Q. He had quit several times? A. Yes.

Q. He didn't work any that summer an maintenance work, did he? A. Dan O'Neal?

Q. Yes. A. No, sir.

Q. When had he left the employ of the company? [760]

A. That summer, he left in July.

Q. In July? A. Yes.

Q. Hefner, C. Hefner, when had he left the employ of the company, or had he left the employ of the company by quitting or by being discharged prior to the time that you sat in with Mr. Willard

(Testimony of Pete Pool.)

on this occasion deciding who was to come back?

A. Well, Charley Hefner, I don't know whether he was working for the company at that time or not, in '41, along in the spring of '41. I think March or April, I think he went to driving a truck, delivering White ice, I am not for sure.

Q. How about your brother Bailey Pool, he went into the Army? A. He quit.

Q. When did he quit, Mr Pool?

A. Along in June some time.

Q. Of that year?

A. No, in July some time.

Q. He was out of consideration? A. Yes.

Q. You didn't have to consider him?

A. No.

Trial Examiner Mouritsen: Mr. Pool, when you say White ice, what do you mean, that that goes to the vegetable packing [761] sheds, or that ice that is sold to domestic consumers?

The Witness: That that goes to the packing sheds. White ice is ice that we sell to the packing sheds.

Q. (By Mr. Ryan): Now, this Dub Hefner is also R. S. Hefner?

A. Yes, there are two Hefners.

Q. Brothers? A. They are brothers.

Q. When had R. S. Hefner last worked for the company at the time you were meeting with Mr. Willard in his office, trying to select the men?

A. I think he was still working for the com-

(Testimony of Pete Pool.)

pany, I am not for sure. He left me also in the spring of 1941, went to the front end.

Q. Went where? A. Delivering ice.

Q. Did you consider him then when you were considering who was to go back? A. No.

Q. He wasn't being considered?

A. No, sir.

Q. How about the other Hefner, C. Hefner?

A. Yes, C. Hefner, Charley, I did consider him.

Q. So that left your consideration with Mr. Willard, the group you were considering consisted of Miller, H. G. Miller, and your brother Herman Pool, and M. K. Stout, Art Standifer, [762] Perry Blankenship, L. C. Hart, George Harlan, L. Gettle, S. Harlan, H. Fruhn, D. Ireland, D. O'Neal and C. Hefner, is that right? A. Yes, right.

Q. So you started to operate the plant in the fall about the 29th of October, 1941, or the first of November, when you started up in 1941, after you had gotten the electric equipment, you started up the plant, isn't that right?

A. That is right, started up the last part of October or the first of November.

Q. So far as the two departments are concerned known as the tank room and the storeroom, you had seven employees in that? A. Right.

Q. And that doesn't take into consideration the department known as platform and delivery?

A. No, it does not.

Q. When you started to operate the plant that fall, did that platform and delivery department

(Testimony of Pete Pool.)

start up right away, too, or didn't you have any employees in there?

Mr. Smith: Objected to as not proper cross examination. This witness doesn't know anything about those other departments.

Trial Examiner Mouritsen: The witness can say so. I will overrule the objection.

Mr. Ryan: He testified to it. [763]

Trial Examiner Mouritsen: Answer the question.

The Witness: The question, please?

(The question was read by the reporter.)

The Witness: I didn't have any employees in there, I don't know.

Q. (By Mr. Ryan): Now, of this group we have just identified as a group from which you made your selections in the office with Mr. Willard you selected M. K. Stout as one, didn't you?

A. I did.

Q. And when I say "you," I mean you or Mr. Willard? A. Yes.

Q. And you selected George Harlan?

A. Yes, sir.

Q. L. Gettle? A. Yes, sir.

Q. D. Ireland? A. D.?

Q. R. F. Ireland, or Dick Ireland?

A. Yes, sir, I did.

Q. S. Hogue? A. Yes, sir.

Q. And G. P. Drinkard? A. Yes, sir.

Q. W. T. Morgan? A. Yes, sir. [764]

(Testimony of Pete Pool.)

Mr. Petersen: The last one?

Mr. Ryan: W. T. Morgan.

Q. (By Mr. Ryan): When had he worked for the company last previous to this discussion in Mr. Willard's office?

A. In July, I laid him off in July, 1941, I think.

Q. How long had he been working for the company?

A. For two seasons.

Q. In what department?

A. Storeroom.

Q. Now then, after the selection had been made by you and Mr. Willard, Herman Fruhn, who, up to that time had worked for the company since 1929, was left out as an ice puller while M. K. Stout and S. Hogue and L. Gettle were kept on as ice pullers?

A. Yes.

Q. None of those men had had anywhere as near as much seniority?

A. That is right.

Q. In fact, L. Gettle had not been an ice puller up to that time?

A. Yes, he had.

Trial Examiner Mouritsen: Didn't he work in the storeroom the year before?

The Witness: He did work some in the storeroom the year before. He went from the storeroom to the tank *can* and [765] pulling.

Trial Examiner Mouritsen: When was that?

The Witness: I think he went to the tank room in the spring of 1940.

Trial Examiner Mouritsen: Spring of 1940?

The Witness: Yes, along in March or April, if I am not mistaken.

(Testimony of Pete Pool.)

Trial Examiner Mouritsen: Was that 1940 or 1941 that he did that?

The Witness: Before '41, in the spring.

Q. (By Trial Examiner Mouritsen): Had he worked all during 1941 in the storeroom, is that right?

A. No, he worked on the tank, to the best of my recollection in '41.

Q. Did he start out in the storeroom in 1941?

A. No, sir, started out on the tank in '41.

Q. Perhaps I am not clear. In the 1940-41 season, you know that starts——

A. (Interrupting): He started in the store-room.

Q. Did he work in the storeroom all during that year? A. No, he didn't.

Q. Did he go into the tank room?

A. Yes, sir.

Q. Do you recall about when he did that?

A. Along in March, I think, April or March.

[766]

Q. On these can pullers do they all operate cranes? A. You mean then or now?

Q. Well, then. A. Yes, operate cranes.

Q. Well, how many shifts did they work?

A. Three shifts.

Q. How many can pullers to a shift?

A. As I say it changed in 1941, I think.

Q. Let's take the 1941 season that began the end of 1940 and ran over into the spring and summer of 1941. That was when you were on Diesel power?

(Testimony of Pete Pool.)

A. Yes.

Q. How many cranes were there?

A. One crane.

Q. Did you have more than one man per shift on a crane?

A. One man to the shift. Three shifts, there were three shifts in 24 hours.

Q. Yes. What confuses me is I see from the payroll that they had five can pullers during January 1941. How could that be when they have only one crane?

A. Well, here it is, see, one man—it takes three men in 24 hours to pull the ice, operate the crane; three men. And under working 40 hours a week, why, it took five men to pull ice a week. So each man could get his 40 hours in.

Q. All right. Where does the sixth man come in? [767]

A. The sixth man on the windup there he was a relief man, I think he only worked a couple or a half a day on a crane, to fill in.

Q. Then he spent the rest of his time in the storeroom?

A. Sometimes the storeroom and sometimes in the engine room, maintenance work.

Q. How many half days did he put in in the can pulling room in the tank room, as a can puller, during the spring and summer of 1941? I am referring to Gettle.

A. Gettle was a steady man. He run a steady shift. He wasn't relief, he had a shift, rotated.

(Testimony of Pete Pool.)

See, the relief man, he works all days, what we call our relief man, he works days, comes on and works all day shift and regular shift man, he rotates, every week, move up a shift every week.

Q. Well, then, did you have six regular can pullers during the spring and summer of 1941?

A. No, five only regular can pullers.

Q. You say Gettle still worked steadily doing that?

A. He did.

Q. Were any of these other five sick?

A. Sick?

Q. Yes. Were they out sick or off for any reason?

A. No, I don't think so.

Q. What had you been doing before Gettle—say, you started there in March, who, if anyone, had been doing that work [768] before that time?

A. Before that time I think Art Standifer had been doing that work.

Q. Mr. Standifer was a regular operator, wasn't he?

A. No, in 1941, he was in the spring of 1941.

Q. It looks, as I understand it, here are the five men who were can pullers during January of 1941?

A. Yes.

Q. I am showing you Respondent Ice Company's Exhibit 1-A. Now, those are five men that would take up your entire shift on a single crane at 40 hours a week, wouldn't they, or would they?

A. Yes, I guess—no, a relief man comes in there somewhere.

Q. When you say that Gettle worked a steady

(Testimony of Pete Pool.)

shift, is that right, or did he just come in occasionally?

A. No, he had a steady shift, he rotated. He worked the same as the other five men, all of them rotated.

Q. Did you increase the number of hours in March, 1941?

A. No, the hours would be the same, to the best of my recollection.

Q. Had you had any relief man before Gettle started to do that in 1941? A. I had, yes.

Q. Who was that?

A. I couldn't say whether it was Art Standifer—— [769]

Q. Mr. Standifer was regular, wasn't he? He is already on this list, he is one of the five.

A. Or Perry Blankenship.

Q. He is also one of the five?

Mr. Smith: What is the question?

Trial Examiner Mouritsen: Who was the relief man before Gettle, whom he classifies as a relief man?

The Witness: I will have to give it up, I don't know.

Mr. Ryan: Miss Reporter, will you mark this document Board's Exhibit next in order?

(Thereupon the document referred to was marked as Board's Exhibit No. 11, for identification.)

Mr. Ryan: Miss Reporter, will you mark these documents as Board's Exhibits next in order?

(Testimony of Pete Pool.)

(Thereupon the documents referred to were marked as Board's Exhibits 12 and 13, for identification.)

Q. (By Mr. Ryan): This exhibit has already been marked Board's Exhibit 10, which we were speaking about this morning, which is entitled "Employees that began the operations of the plant in the fall of 1940." I now show it to you, Mr. Pool, and ask you whether or not that is a group of employees that started the plant in the fall of 1940?

A. It is to the best of my knowledge.

Mr. Ryan: I offer it in evidence as Board's Exhibit 10.

Trial Examiner Mouritsen: Is there any objection to the offer? [770]

Mr. Whitelaw: No objection.

Mr. Smith: The only thing, Herman Smith has the record, he knows they were on the payroll, caused this to be made. The witness says it is to the best of his knowledge; I suppose it is correct.

Trial Examiner Mouritsen: I think it is better to have Mr. Herman Smith identify them.

Mr. Smith: I think so when we get Herman on. Let me ask Herman, and maybe I can stipulate with you.

Yes, he says that is the payroll.

Mr. Ryan: Then I offer it in evidence as Board's Exhibit 10.

Trial Examiner Mouritsen: Will you stipulate that is the correct payroll for—what is the date?

Mr. Smith: Fall of 1940.

(Testimony of Pete Pool.)

Mr. Ryan: The document reads "Employees that began the operations of the plant in the fall of 1940."

Trial Examiner Mouritsen: Do you stipulate that it is the correct list of such employees?

Mr. Smith: The payroll.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 10.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 10, was received in evidence.)

BOARD'S EXHIBIT No. 10

February 11, 1943

Holtville Ice & Cold Storage Co.

Employees that began the operations of the plant
in the Fall of 1940.

Engine Room:

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan

S. Hogue

H. Fruhn

A. Standifer

P. Blankenship

(Testimony of Pete Pool.)

Storeroom:

L. Gettle

R. H. Ireland

B. Pool

Platform & Delivery

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

Garage Mechanic:

N. Ballard

Mr. Whitelaw: Mr. Examiner, in view of the fact there [771] is contention who are and who aren't employees, wouldn't it be better to stipulate those are the persons shown to be on the payroll as of that date, rather than they were the employees?

Mr. Smith: That is what we stipulated. [772]

Q. Well, you testified on direct examination that there were many times when Mr. Willard would—when Mr. Willard came up to you and you would say something to him and he would turn around and walk away. You didn't think he was mad on those occasions?

A. Well, sir, to tell the truth, most of the time I did. [774]

Cross Examination

Q. (By Mr. Petersen): Was your brother Herman Pool an engineer before you became superintendent? A. Yes, he was.

(Testimony of Pete Pool.)

Q. He had been put on the job by the previous superintendent, as an engineer?

A. That is true.

Q. Did you ever promote your brother?

A. I did not.

Q. Did your brother work a regular shift, the same as the other operating engineers?

A. He did.

Q. Did you give your brother any extra work during the operating season, above the other engineers?

A. No, I didn't.

Q. Now, you stated in your examination that you figured that you could get rid of about seven men, did you, on the changeover from Diesel to electric power, is that substantially correct?

A. No, I think I said that we could start up with seven men.

Q. You could start up with seven men?

A. Yes. [775]

Q. And how many men did you figure it would take to operate due to the changeover?

A. Well,—

Q. What would be the difference in, we will say, putting out the same amount of ice due to the changeover from Diesel to electric equipment?

A. Well, when we changed over to the electric equipment we done away with the Diesel operators.

Q. That is four men, is that right?

A. Yes, and we done away with the mechanics, figured we wouldn't need the mechanics.

Q. That is two men?

A. Yes.

(Testimony of Pete Pool.)

Q. That is six men you figured the changeover would eliminate, is that right?

A. Yes, and here's another question come in there, where we figured we would eliminate some men when we were only working 40 hours a week and they let the men work 48 hours, raised up to eight hours, instead of working 40 hours we worked 48 hours; that done away with some of the relief men.

Q. When was the decision made to work from 40 to 48 hours? A. I don't know, sir.

Q. Who made that decision to change from 40 to 48 hours?

A. Well, Mr. Willard, I think, told me—I asked him about the 40 hours, if I remember correctly, and he said they [776] would work 48 hours.

Q. And your operating schedule——

A. Is 48 hours a week now.

Q. At the time you were ready to commence the 1941-42 season you drew up the basis of the employees you were going to have on the basis of 48 hours a week?

A. No, I think 40 hours.

Q. You drew that up on a basis of a 40 hour week? A. 40 hours. [777]

Q. (By Mr. Peterson): When you went over the list of the employees whom you were going to hire back the next year, and you figured that you could get along with about seven less employees, did you check off the names of the employees who

(Testimony of Pete Pool.)

already were gone when you discussed that question with Mr. Willard?

A. No, I didn't because I wasn't checking over the names, didn't have the names or anything written.

Q. Did you know that there were six or seven men who had already disassociated themselves from the employ of the company?

A. I only knew two men—no, I will take it back; three men. [779]

Q. Who were they?

A. One was Bailey Pool, Marion Wooldridge and Eddie Jones.

Q. You didn't know that S. Harlan was no longer working for the company? A. No.

Q. Or Mr. Hefner? A. No.

Q. Or Mr. Wooldridge?

Trial Examiner Mouritsen: He mentioned Wooldridge.

Q. (By Mr. Petersen): Going over into the platform I believe you stated, on direct testimony, that you asked Mr. Drinkard to be put on the list of employees? A. I did.

Q. Was Drinkard working in your department when you asked that he be put back to work?

A. No, he was not.

Q. He was working on the platform or driving?

A. Driving, he had been driving, I presume.

Q. You asked for him? A. I did.

Q. Were you acquainted with the procedure on the driving platform, yourself? A. No.

(Testimony of Pete Pool.)

Q. Did you know that a Mr. Broderick, who was on the platform, was driving? [780]

A. I just know Broderick as a person when I see him.

Q. Did you know that he had left the company's employ?

Mr. Smith: Object to the question, it assumes facts not in evidence.

Mr. Petersen: All right.

Trial Examiner Mouritsen: Fix the time.

Q. (By Mr. Petersen): Did you know whether Mr. Broderick had left the company's employ previous to October 29, 1941? A. No.

Q. Now, when you stated that Mr. Hogue, Mr. Gettle, Mr. Harlan, Mr. Ireland, Mr. Fruhn and Mr. Blankenship did not work during the entire slack season in 1941 between July and the commencement of operations on October 29, is that right? A. That is right, sir.

Q. (By Mr. Petersen): Mr. Fruhn, Mr. Hart, Mr. H. G. Miller, Mr. Herman T. Pool, and Mr. M. K. Stout all did work during that slack season. Is that right? A. Mr. Fruhn didn't.

Q. Mr. Fruhn didn't? A. No.

Q. How about Arthur Standifer?

A. Arthur Standifer did.

Q. He did? A. Yes. [781]

Q. Now, when you met with Mr. Willard to consider who was going to remain in the plant, did you give any consideration to the fact that the last named men, Mr. Hart, Miller, Pool, Standifer,

(Testimony of Pete Pool.)

Stout, had all been working during the changeover?

A. Did I give any——

Q. Yes. A. No, sir.

Q. No consideration to that whatsoever?

A. No, sir.

Q. Then you did recall Mr. Hogue, Mr. Gettle, Mr. Harlan, Mr. Ireland, who weren't working during the change-over, to commence on operations when the plant resumed? A. I did.

Q. Did Mr. Hogue, Mr. Gettle, Mr. Harlan and Mr. Ireland have as much seniority with the company as Mr. Miller, Mr. Hart, Mr. Pool, Mr. Fruhn, Standifer and Stout.

Mr. Smith: Object to the question, it is not only compound——

Trial Examiner Mouritsen: I will sustain it on that ground alone.

Q. (By Mr. Petersen): Did Mr Hogue, Gettle or Harlan or Ireland have as much seniority with the company as Mr. Fruhn? A. They did not.

Q. As Mr. Hart? [782] A. They did not.

Q. As Mr. Miller? A. They did not.

Mr. Smith: That is objected to. I move the answers be stricken for the purpose of an objection, on Miller. Objected to because the evidence has shown that they tried to hire Miller back; he is the one that took a job in Los Angeles.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Petersen): Mr. Herman Pool?

(Testimony of Pete Pool.)

Mr. Smith: It is further objected to on the ground it is compound.

Q. (By Mr. Petersen): Mr. Art Standifer?

Trial Examiner Mouritsen: Wait a minute. I will overrule the objection.

Mr. Whitelaw: Hasn't this all been gone into twice by Mr. Ryan?

Mr. Petersen: No.

Mr. Whitelaw: He went into it in length this morning.

Mr. Petersen: We finally had a witness this morning, Mr. Willard stated he didn't know those things and Mr. Pool and Mr. Smith could testify.

Q. (By Mr. Petersen): Mr. Standifer?

Mr. Smith: Objected to as being compound.

Q. (By Mr. Petersen): Did Mr. Standifer have more seniority [783] than Mr. Hogue, Gettle or Harlan or Ireland? A. He did.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Petersen): Mr. M. K. Stout, did he have more seniority than Hogue, Gettle, Harlan and Ireland? A. Yes, he did.

Q. And how about Mr. George P. Drinkard, did he have more seniority than Hogue, Gettle, Harlan and Ireland?

A. He did; Pete Drinkard did.

Q. Now, you stated that Mr. Hogue, Gettle, Harlan, Ireland, Fruhn and Blankenship were laid off during the spring and summer season of 1941?

A. They were.

(Testimony of Pete Pool.)

Q. Was that done before Mr. Willard went on his vacation or while he was on his vacation?

A. It was done after he went on his vacation, to my best recollection.

Q. Now, with the repair work that is being done at the plant at the present time, how do you do the sheet metal work repair, if there is any?

A. There isn't any sheet metal work now.

Q. Do you do any new construction on sheet metal work that was formerly done at the plant?

A. Not to my knowledge.

Q. Who runs the machine shop at the plant now? [784]

A. We haven't any machine shop.

Q. You don't do any more machine work down at the plant at all?

A. Well, we do a little welding. I do a little welding; I do that myself.

Q. What about other machine work, such as making crusher teeth?

A. We buy those already made now.

Q. You send any work out to a machine shop now?

Mr. Whitelaw: As distinguished from electrical stuff?

Q. (By Mr. Petersen): As distinguished from electrical?

A. We sent one job out in '41. Is that what you are referring to?

Q. Yes. A. 1941.

Q. 1941. And thereafter——

(Testimony of Pete Pool.)

A. We sent one job out to a machine shop.

Q. Who does the repair work now on the dynamo, if you have any? Do you have any dynamos?

A. We have no dynamos.

Q. On the ice compressors?

A. I did.

Q. Pumps?

A. Pump work?

Q. Yes. [785]

A. I do it.

Q. I believe you testified that you did some work in the packing sheds. How much work do you do in the packing sheds on the conveyor equipment in the sheds?

Trial Examiner Mouritsen: How much of your time does it take, as a rule, to do that work?

The Witness: You mean over the period of a season?

Q. (By Mr. Petersen): Over a season.

Trial Examiner Mouritsen: Yes.

The Witness: I would say approximately an hour a week.

Q. (By Mr. Petersen): Now, you said you talked to Mr. Willard about the union. Was that the day after the boys joined the union, or was it later than that?

A. Well, it was later than that, I presume, I talked to him.

Q. Did you converse with your brother, Herman Pool, about going to the union meeting?

A. No, sir.

Q. Did you talk to Mr. Willard or Mr. Herman Smith concerning the formation of an employees association at the plant, Holtville Ice Company?

(Testimony of Pete Pool.)

A. No, sir.

Q. Did you talk to any of the employees at all about the employees association?

A. No, sir. [786]

Q. I believe you testified that you phoned Mr. Miller he could come back? A. I did.

Q. Did anyone request you to phone Mr. Miller to come back? A. No, sir.

Q. Did you know that Mr. Miller had already gone to Los Angeles when you phoned him?

A. I did not.

Q. Did you know anything about an employees association being formed down at the plant?

A. Yes, hearsay, I did.

Q. About what time did you first hear about that?

A. Oh, along in September, I think it was.

Q. Did Mr. Osborne ever contact you?

A. No, sir.

Q. I believe you testified that your next year's employment list for the '41-42 season was drawn up sometime between October 15th and the 1st of November, is that right?

A. The next year's season?

Q. For the next year's season, for the '41-42 season that you met with Mr. Willard and drew up the employment list?

A. I met with him, we didn't draw up anything; I talked to him.

Q. You talked to him.

A. We talked it over. [787]

(Testimony of Pete Pool.)

Q. That was between October 15th and November 1st? A. Yes, sir.

Mr. Petersen: That is all.

Cross Examination

Q. (By Mr. Yeager): Mr. Pool, this discussion you heard about an employee's union that you said took place in September, did you hear that before Mr. Willard came back from his vacation or afterward?

A. Well, to the best of my knowledge, yes.

Q. Which? A. Before.

Q. How long before, do you remember, about?

A. Oh, I would say approximately seven or eight days.

Q. And do you remember who, among the men, you heard discuss it out there? A. I do not.

Q. It was the men in the plant, was it, the employees of the Holtville Ice Company?

A. That is right.

Mr. Yeager: That is all.

Q. (By Trial Examiner Mouritsen): Mr. Pool, what was the kind of repair work they were doing in the summer of 1941, can you tell me just what kind of work it was?

A. Well, most of the work they were doing was working on conveyors in the ice room and working on the icing machines. [788]

Q. That work continued pretty much up until the beginning of October, is that right?

A. That is right, yes, sir.

(Testimony of Pete Pool.)

Q. Was any particular skill required in that work? A. No, sir.

Q. I think when Mr. Willard left he told you to let the men you didn't want go, is that correct?

A. That is correct, sir.

Q. What was the basis for your selection of the men who continued to do this work throughout the summer and those that you let go?

A. Well, the ones that I thought could do that particular job the best, is the ones I kept.

Q. This job didn't require any particular skill, is that right?

A. That is right, sir.

Q. Were they the ones you considered the better workers?

A. Yes, sir, on that certain job. [789]

Cross Examination

Q. (By Mr. Petersen): I believe you stated you had heard some talk about an employees association being formed prior to Mr. Willard's return from his vacation, is that right? A. No, before.

Q. Before Mr. Willard came back from his vacation? A. Yes, sir.

Q. When did you first hear about the Teamsters Union attempting to organize the men, was that before or after Mr. Willard came back from his vacation? A. Before.

Q. That was before? [791] A. Yes, sir.

Q. What did you hear in that regard?

A. Well, a whole lot of it, it was hearsay, some

(Testimony of Pete Pool.)

of the men told me they had joined the union and some of the men I asked them.

Q. Did you hear the testimony here that Mr. Willard stated he came about September 20th, and did you heard Mr. Willard testify to that effect?

A. I think I did.

Q. Did you hear the testimony of other witnesses that they joined the union about September 26, 1941?

Mr. Whitelaw: You mean they made application?

Q. (By Mr. Petersen): Made application.

Mr. Whitelaw: All right.

The Witness: I did.

Q. (By Mr. Petersen): Did they make application after Mr. Willard had actually returned?

A. The time the men told me that they made applications, I don't know what time they made them, it was before Mr. Willard came back, before I seen Mr. Willard.

Q. I have already asked you whether—when Mr. Willard came back, did you tell Mr. Willard there was some talk around the plant of forming an employees association?

A. No, I didn't tell him.

Mr. Petersen: That is all. [792]

Cross Examination

Q. (By Mr. Ryan): But you did tell *them* there was some organization among the men by the Teamsters, some union activity among the men?

A. Yes, I told him I thought the plant had went union.

(Testimony of Pete Pool.)

Q. And did you have in mind at that time this making of application for membership in the Teamsters Union? A. Myself?

Q. Yes.

A. No, not at that time I didn't, I found out I couldn't join.

Q. I don't mean your joining, Mr. Pool. I mean the other men that you either heard about or talked to directly. The other employees. You were talking to Mr. Willard, were you, basing what you were telling Mr. Willard on what you had found out from the other employees about joining the A. F. of L.? Telling him information you had gotten by hearing about the men joining the A. F. of L.?

A. No, the only thing I told him I thought it all went union.

Q. What did you base that on?

A. Just on that.

Q. On what?

A. That the plant went union, I thought I would tell him that the plant went union, maybe he would talk it over with me.

Trial Examiner Mouritsen: Why? In other words, had [793] these men told you they had joined the union before you told Mr. Willard that you thought it had gone union?

The Witness: Yes, they had told me before I told Mr. Willard. [794]

PROCEEDINGS

Trial Examiner Mouritsen: The hearing will be in session.

Mr. Smith: The respondent ice company will now call Herman Smith as its next witness.

HERMAN P. SMITH

called as a witness by and on behalf of the Respondent Holtville Ice and Cold Storage Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Smith): You may state your full name, please. A. Herman P. Smith.

Q. What is your business or occupation?

A. Bookkeeper.

Q. For whom?

A. The Holtville Ice and Cold Storage Company.

Q. How long have you worked for the Holtville Ice and Cold Storage Company, Mr. Smith?

A. Since May, 1927.

Q. Have you been in the office all the time?

A. Well, the first year I was in the office part of the year, and the balance of the year I was not. Since that time I have been in the office.

Q. Who is the office manager?

A. I am as much as there is any.

Q. Are all of the books and records under your direct super- [799] vision and control?

A. That is right.

Q. Including payroll records?

A. That is right.

(Testimony of Herman P. Smith.)

Q. And time records? A. That is right.

Q. Do you employ and discharge?

A. I do those working under me in the office and taking care of the clear ice on the platform.

Q. Mr. Smith, going to the witness Le Roy Davis, did he work under you for some time?

A. He did.

Q. Just approximately how long did he assist you with the office work?

A. I would say six or seven years.

Q. Now, just tell the Board briefly what he did the last few years he worked.

A. Well, his principal job was delivery foreman, taking care of the delivery of the vegetable ice, and during the off season, that is the season between vegetable ice sales, he spent all of his time in the main office doing clerical work and oh, I think, he waited on the platform a little—filled in occasionally on the clear ice platform, making sales.

That wasn't his regular job, but I might say that there is some switching back and forth between the men that made [800] the clear ice sales over the platform and the men that worked in the office.

In other words, inasmuch as there were not enough sales to keep a man—that is for the last two or three years, not being enough sales to keep a man busy out on the platform continuously, we would work him in some way in the office.

He would do miscellaneous clerical work, just in a small way.

(Testimony of Herman P. Smith.)

Q. As I understand the physical setup of the plant, the platform from which clear ice sales are made is directly attached to the office, or the office is right off of said platform?

A. That is right. The cash register, for example, that the sales are registered on is in the main office.

Q. In other words, a man could sit in the office and could see a car drive up and could step out and wait on it? A. That is right.

Q. And about how many feet is it from the office door to the platform from where the clear ice is sold?

A. The platform extends up to the office door.

Q. So as I understand it, he would sit in the office and if someone drove up, he would wait on them occasionally? A. That is right.

Q. Now, just what did he do during the entire shipping [801] season—that is, from the latter part of December to some time in July, as long as you were serving the packing sheds with vegetable ice? Just tell exactly the day's routine.

A. In any particular season?

Q. No, no.

A. We have a small office in connection with our vegetable ice delivery platform. There is a phone in this office and Mr. Davis' duties were to answer the phone in that particular office.

He would write up the invoice, the sales ticket for the ice that is to be delivered, and he was in charge

(Testimony of Herman P. Smith.)

of getting this ice delivered—he had charge of the drivers.

Q. You mean he would tell a driver where to take a load of ice? A. Yes, sir.

Q. And how much to take?

A. That is right.

Q. Now, this office you speak of, is that on the same platform where the clear ice is sold?

A. No, it is at a different side of the platform.

Q. And was there any work in that little office on the vegetable ice platform, except during the vegetable shipping season? A. There was not.

Q. And so you say in former years you gave him what you [802] could to do in the way of clerical work around the office for five or six months of the year? A. That is right.

Q. Now, did you and Mr. Willard ever discuss—strike that.

He testified that he worked on an hourly basis up to a certain date and then he went on a monthly rate. Do you recall that? A. I do.

Q. And who, if anyone, suggested that he go on a monthly basis instead of an hourly basis?

A. Mr. Davis.

Q. Who did he suggest it to? A. To me.

Q. Do you recall about when that was?

A. I think it was at the beginning of 1939-1940 shipping season, or vegetable season.

Q. Can you tell us the substance of the conversation?

(Testimony of Herman P. Smith.)

A. Well, Roy was—we left it up to him to look after getting it——

Q. Give us the substance of the conversation—what he said and what you said.

A. Well, he said that inasmuch as he was required to be, or, inasmuch as he was responsible for seeing that the vegetable ice was delivered, that it required him being subject [803] to duty or subject to work over rather a long day; that it would be better if he was paid on a monthly basis entirely rather than being paid as he had been formerly paid on—pardon me a minute—it would be better if he was paid a flat monthly rate at a higher rate of pay per month than he had been formerly paid, and in addition receiving extra compensation for hours over the regular work day.

He said that it made it a little difficult to just keep track of the hours that he actually was working. For example, he took care of his shopping during the day. He would go uptown during a slack period and maybe buy his groceries or go up to the house and do some errands if it was necessary, during the day, and he said it was rather difficult to keep track of just what time that he was actually working for the company and what time that he was doing work for himself, so by changing the basic monthly rate of pay and doing away with some of special overtime, it would simplify matters.

Q. All right. Now, who, if anyone, suggested what monthly salary he should receive?

A. I don't recollect.

(Testimony of Herman P. Smith.)

Q. All right. If you don't remember, we will pass that.

Was there anything said by him or by you about the length of time that he would hold this job at the time he was put on monthly pay?

A. No, not to my knowledge. [804]

Q. I believe Mr. Davis testified in substance that it was understood, at least by himself, that if he went on this monthly job that he would hold it through the slack season and he would handle whatever there was to do in the busy season.

Was there anything said about that between you and him?

A. No mention that I have any recollection of.

Q. Now, he attended to the delivery platform then, from which vegetable ice was shipped, up until July of 1941, did he? A. Correct, yes.

Q. Then *what he* do in the summer after you stopped hauling vegetable ice, between then and October?

A. He did about the same that he had done in previous years.

There was a little extra correspondence at that particular time in connection with the purchase of materials and equipment used in making the change-over in the plant, and we had, in disposing of the equipment—some of the material that we had, some work.

Q. Then you are the one that laid him off, were you not? A. That is right.

Q. Do you know what date that was?

(Testimony of Herman P. Smith.)

A. It was on a Sunday during the latter part of October. I believe it was the 19th or thereabouts, of October. It [805] was Sunday. It might not have been on a Sunday, but it was close to the 19th of October.

Q. All right. What did you say to him and what did he say to you at that time?

A. Well, I told him that it looked like he would have to take off more—to be laid off—have to take off for a while. I told him that things were getting pretty slack.

If I remember correctly, I explained to him that this had been developing over the last two or three years; that our clear ice volume had been dwindling and it had gotten to the point that we were going to have to make some adjustments in order to cut down on expenses; that the income from our clear ice sales didn't justify the expense.

Q. Well, did you say to him—just tell everything that you said to him that you now recall.

A. I told Roy at that time that to me it didn't look like there was much future there in the office. In other words, I had about the only, you might say, good job there in the office and I thought it would be, since there was quite a pick-up over the country in the demand for labor, and I thought it was a good time for a person to get out and make a change, and I mentioned to Roy that he was getting to the age it would be more difficult from then on to make a change, to get work elsewhere, and that that was a good time, and that it would be my personal sugges-

(Testimony of Herman P. Smith.)

tion to him that if he could [806] get in some place else that would assure him more steady work, it looked like from there on out it would be just a seasonal job—just during the vegetable ice season.

Q. Right there, did you tell him whether he could or could not return at the beginning of the vegetable ice season?

A. I told him there wouldn't be any work until after the vegetable season started until he would take over the delivery of the vegetable ice, until that time came, when we would have to have someone take over the delivery of the vegetable ice.

Mr. Petersen: May we ask when—the witness is answering a question and still talking. Counsel, let him fully answer and not say “right there” and ask another question.

Trial Examiner Mouritsen: Come on, gentlemen, let's go along.

Q. (By Mr. Smith): Well, what did he say to all that that you told him?

A. Well, Roy kind of flared up.

Mr. Ryan: I object to that conclusion—the conclusion that he “flared up.”

Trial Examiner Mouritsen: Tell us what he said.

The Witness: He said that he had thought this would come. He said that he had joined the Teamsters Union and that he figured he would be laid off.

Q. (By Mr. Smith): What did you say? [807]

A. I told him, “Roy, that is the first time that I knew that you were a member of the Teamsters

(Testimony of Herman P. Smith.)

Union or had heard that you were a member of the Teamsters Union.”

He went ahead and said that he would—he didn’t know just what he would do, whether he would apply for work elsewhere or not. He said he would think it over. That was the statement he made to me, so I told him in order to tide him over while he was seeking work elsewhere, if he decided to, I would pay him up until the first of November.

Q. Did you do that?

A. I did. And I believe he said—well, he said—I think I mentioned one or two possibilities where he could get work, and he made the remark he thought he would follow that up, so I went ahead and issued him a check up to the first of November.

Q. Now, Mr. Smith, had you had any conversation with Mr. Willard any months prior to laying Roy Davis off regarding the continuation of his services?

A. I remember one time in particular—that was before Mr. Willard left for his vacation in 1941, along toward the end of the vegetable shipping season, that there was a little discussion about our operations for the summer, and Mr. Willard said that he felt that there was too much overhead in connection with our clear ice sales—too much expense there in the office, and he asked me if I felt that it was [808] necessary that I keep Roy during the summer months, and I told him I thought by simplifying our procedure there in the office a little I could handle it without Roy’s help.

(Testimony of Herman P. Smith.)

So, he says, "Well, I think you had better let him go—lay him off."

Q. Yes.

A. When the vegetable ice shipping was over with.

Q. And was Mr. Willard present at the Holtville Ice and Cold Storage Company when the vegetable ice season was finished in July of 1941?

A. I don't recollect [809]

Q. Well, after that discussion that you have testified to about having with Mr. Willard before Mr. Willard went on his vacation, I will ask you if you had another conversation with Mr. Willard regarding whether you would or would not keep Roy Davis after Mr. Willard returned in the fall?

A. I did.

Q. State about when and where that conversation was.

A. I believe it was around in the first part of October— [810] possibly around the middle of October.

Q. Very well. State what you said and what Mr. Willard said regarding that.

A. Mr. Willard came to the office one afternoon. I believe he had been out in the plant. He came to the office and said to me, "Herman, I thought you were going to let Roy go when the vegetable ice shipping season was over with."

I don't know as I made any particular reply. Then he said, "There is no work for him around here, is there?" I don't remember particularly what my reply was.

(Testimony of Herman P. Smith.)

I believe he asked me pointblank why it was I hadn't laid him off at the end of the 1941 vegetable shipping season, and I wound up by saying that I guessed it was because I lost heart.

Q. Were you friendly with Davis and his family?
A. Yes, I was.

Q. You liked him and liked to work with him, did you?
A. That is right.

Q. And his work was satisfactory at all times, was it?
A. That is right.

Q. Well, had you heard from any source at the time you laid him off, Herman, that he had joined the union, or made application to join the union?

A. No.

Q. Now, did you lay off any of these other men that are [811] named in the complaint?

A. No. They weren't—well, with the exception of possibly Henry Fredenburg. He had put in a little time now and then in connection with the sale of ice refrigerators and possibly he had pinch-hit on the platform making clear ice sales, and I believe the question was asked of me if I had any more of that kind of work for him, and I told him that the season was over with and that I didn't.

Q. When was that?

A. Oh, the latter part of October. I don't remember the exact date. That was the customary time.

Q. Did any of the men named in the complaint every apply to you for reinstatement?

A. Yes.

(Testimony of Herman P. Smith.)

Q. Which one or ones?

A. Herman Fruhn.

Q. When did he come to you?

A. It was around Christmas of 1941.

Q. All right, tell what he said and what you said, please.

A. He came into the office—now, I should go back a day or two. I had seen him up at the grocery store a day or two before, and Herman asked about work at the plant. He asked me about it. Well, since it wasn't my job to hire help in the plant I couldn't give him any definite reply, but I told him that I knew we were going to be putting on help and I [812] didn't see any reason why, if he wanted to work at the work we had for him, any reason why he couldn't work, and I would ask Mr. Willard about it. So, I asked Mr. Willard about it and Herman came down on this particular day—came into the office.

Q. When you asked Mr. Willard, tell what you said to Mr. Willard and what he said to you.

A. I asked Mr. Willard, I told him that Herman had mentioned to me about going to work and asked if there was any objection to putting Herman to work, and he says, "Well, we don't need him, do we?"

I said that, "We are putting on some men in the storage."

"Well," he says, "I don't have any objection to him working there but I don't want him out there fooling around with that crane."

(Testimony of Herman P. Smith.)

Q. Was there anything more to the conversation?
A. That was all that was said.

Q. All right. Then what next happened regarding Herman Fruhn?

A. Then Herman, as I previously stated, came to the office as a result of this conference—of our meeting that we had had uptown, and I told him that I had talked with Mr. Willard and had asked if he needed anyone out there—I asked Pete if he needed anyone out there, and I told him that Pete said that he did and to go out and see Pete—I thought he could [813] go to work.

Q. Did he go to work?
A. He did.

Q. What date was that that he went to work?

A. I believe he worked the 28th—I believe he went to work the 28th or the 29th of December. It was right at the very end of December.

Q. How long did he work?

A. He worked one shift. I don't know whether he worked any more than the one shift or not, but it was only one or two shifts.

Q. And did he say anything to you when he left?

A. I believe I saw him uptown the next day or two, up to the grocery store again, and he told me that—he said that he couldn't take it. He even told me that on this one shift he had to get his boy to come down and help him out handling the ice—taking care of the ice that was being stored.

Q. Well, he voluntarily left then, did he?

A. That is right.

(Testimony of Herman P. Smith.)

Mr. Ryan: I object to that.

The Witness: And he came in a day or so——

Trial Examiner Mouritsen: Overruled.

The Witness: Came in a day or two later after his pay check, which was paid him, of course. I believe he said, "I am not as young as I used to be and I can't do that kind [814] of work.

Q. (By Mr. Smith): Which is the less desirable job from the standpoint of the workmen there in the plant, Mr. Smith?

A. Working in the storage. That is in the vegetable ice storage, either putting the ice in or taking it out—taking it out is the most undesirable.

Q. Just tell what the operation is when it is put in there.

A. We have a large room. The ice comes into this room on a conveyor and it is stored—tiered.

Q. Well, does the conveyor carry it—how close to where it is to be placed does the conveyor take it?

A. Well, under our setup for the last five years we have one conveyor chute that brings the ice—they arrange the chutes so the ice slides by gravity within probably 10 or 15 feet of where it is to be stored. Of course, it has to be placed as the layers are put in.

Q. Is there any lifting to be done by the men in the store room? A. No.

Q. How do they move it in place?

A. They slide it. It is slid over on the first layer—it is slid on the floor and then on successive layers of ice.

(Testimony of Herman P. Smith.)

Q. How do they take a hold of it—do they use tongs or [815] poles?

A. They have ice tongs.

Q. And pull it?

A. That is right. They pull it to place.

Q. Now, Herman, were there any of the other of the men named in the complaint—did any of them apply to you for reinstatement—

The Witness: Will you read the question?

(Question read.)

Q. (By Mr. Smith): Those who are named in the complaint.

A. Will you name those that are named in the complaint?

Q. Yes. Arthur Standifer—did he ever apply to you for reinstatement? A. He did not.

Q. Lester C. Hart? A. He did not.

Q. L. H. Davis? A. He did not.

Q. H. C. Fredenburg? A. I believe—

Q. You have testified to that.

A. I laid him off. He never applied after that for work. Pardon me, he did too. He asked me—although the white ice delivery men were hired by the white ice delivery foreman, he asked me the question if he was going to get to haul [816] white ice inasmuch as at that particular time we weren't in our vegetable ice season so we didn't have any one in charge of that end of the business. I told him that I didn't—I didn't know—we hadn't come to that time and I didn't know who would be the

(Testimony of Herman P. Smith.)

one that would be put on; Mr. Willard was the one at that time that was really the last word or that was in position to say whether a man might or might not be put on during the vegetable ice season.

Q. Was that the only form of application that he ever made to you, asked you if he would be put one?

A. That is right.

Q. How about Perry T. Blankenship?

A. No, he never applied for work.

Q. Herman T. Pool? A. No.

Q. And the only other one is Herman Fruhn. You have already testified regarding him?

A. He did.

Q. Now, Mr. Smith, I will ask the reporter to mark a paper as Respondent Ice Company Exhibit 6 for identification.

(The document referred to was marked as Respondent Holtville Ice and Cold Storage Company, Exhibit No. 6 for identification.)

Q. (By Mr. Smith): Now, showing you Respondent ice company Exhibit 6 for identification, Mr. Smith, I will ask you if [817] you prepared the original chart of which this is a copy, from the books and records of your company, or caused it to be prepared under your supervision and direction.

(Handing exhibit to the witness.)

A. Well, as near as I can identify this, without checking back against my records—

Q. Well, didn't you look at it yesterday to see whether it was correct?

(Testimony of Herman P. Smith.)

A. Yes, yes, I did. I check this. Here is my check mark on it.

Q. Was that made then under your supervision and direction? A. It was.

Q. Now, on the top of the sheet it says, "Number of Days Worked" and then it says "Pay Period Ending June 15" in one column, and "June 30" in the second column, and up above the word "June" is the figure "1941" and then as the sheet goes along it covers the pay period ending July 15, July 31, August 15, August 31, September 15, September 30, October 15, and October 31. And over in the left-hand column is a list of names of employees.

Now, regarding that list of names, Mr. Smith, does that include all of the employees of the plant, or just those in the production and delivery end of it? A. (No answer)

Mr. Smith: I will strike that out. [818]

Q. (By Mr. Smith): Does that list include any superintendents or office help?

A. No, other than Roy Davis' name appears at the bottom here.

Q. Now, take the first name as an example, H. G. Miller, for instance, and that shows 11 under June 15. What does that mean?

A. Represents the days worked during that pay period—during the pay period from June 1 to June 15, inclusive.

Q. All right, then it shows—— A. 1941.

Q. Under June 30 I suppose that shows the num-

(Testimony of Herman P. Smith.)

ber of days he worked from June 15 to June 30, is that right?

A. June 16 to June 30, inclusive, correct.

Q. Then under the pay period of September 30 there appears two letters, T. O. A. Yes.

Q. And the first name that that appears for is that of Herman Fruhn? A. Right.

Q. Now, what does that "T. O." mean?

A. Temporarily off.

Q. Now, was Herman Fruhn temporarily off at that time?

A. He was, according to my understanding.

Q. In other words, you had a place for him in the store [819] room if he wanted it, is that right?

A. That is right.

Q. (By Mr. Smith): In other words, Mr. Smith, those names [825] which appear on the left-hand column and under the date of September 30, which you have indicated by a "T. O." which means "temporarily off," had they all worked for the company prior to September 30 in the preceding vegetable shipping season? A. They had.

Q. And did they all work in the succeeding vegetable shipping season? A. They did.

Mr. Smith: I will offer the exhibit as Respondent ice company's next exhibit.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Ryan: I will not object to it for what it is worth; I don't think it is worth very much. I do object to it—I do object to the "T. O." as stating a conclusion. All that is obviously a conclusion.

(Testimony of Herman P. Smith.)

Mr. Smith: Well, he has explained what he meant by it.

Trial Examiner Mouritsen: As I understand it, Mr. Smith, the "T. O." means that they did not work during that period but they at some later period again worked for the company, is that right?

The Witness: They worked during our next manufacturing and shipping season.

Trial Examiner Mouritsen: And that would be anywhere from October 29, 1941 up through or to July, 1942? [826]

The Witness: That is right.

Trial Examiner Mouritsen: And if they worked any time during that period I specified, then they are designated "Temporarily Off" here, is that right?

The Witness: Will you read the question?

(Question read.)

The Witness: What do you mean by that time?

Trial Examiner Mouritsen: The period from, beginning October 29, 1941 and extending up to July, 1942.

The Witness: Correct.

Trial Examiner Mouritsen: Because I note there is no indication upon this exhibit that the men worked after September 30th and before the pay period ending October 31, 1941. Do you understand that?

The Witness: That is right. Well, this took our 1941 season up to the end—up to the start of the 1941-1942 season. In other words, this took our

(Testimony of Herman P. Smith.)

1940-'41 season up to the start of the 1941-'42 season.

Q. (By Mr. Smith): In other words, Mr. Smith, to carry the chart out farther, as you have explained it, you could put the T. O.'s for the period October 15 and October 31 just as well as September 30th?

A. That is right, and into November and to whatever time they were put back on the payroll.

Q. In other words, you claim those same men were temporarily [827] off on October 15 and also on October 31 that you have indicated as being "temporarily off" on September 30th.

A. That is right—right on through until their name appears again on the payroll.

Trial Examiner Mouritsen: That would not be true as of the pay period ending October 31st because a number of them worked several days.

Mr. Smith: Yes, yes.

The Witness: I said up until the time their names appeared on the payroll and these men's names appeared on the payroll at that particular time.

Trial Examiner Mouritsen: I see. Is there any objection to the offer?

Mr. Ryan: Other than I have indicated, no.

Trial Examiner Mouritsen: I shall receive the exhibit as respondent ice company's Exhibit No. 6.

(Thereupon the document heretofore marked for identification was received in evidence and marked as Respondent Holtville Ice and Cold Storage Company Exhibit No. 6.)

(Testimony of Herman P. Smith.)

RESPONDENT ICE COMPANY EXHIBIT No. 6

Holtville Ice & Cold Storage Co.

January 25, 1943

NUMBER OF DAYS WORKED

Pay period ending.....	1941		1941		1941		1941		1941		1941	
	June 15	June 30	July 15	July 31	Aug. 15	Aug. 31	Sept. 15	Sept. 30	Oct. 15	Oct. 31		
Name												
H. G. Miller	11	11	10	12	11	10	11	11				
M. K. Stout	11	9	12	12	11	11	5	7	8	13		
H. T. Pool	11	12	11	12	11	12	11	12				
M. Wooldridge	10	11	11	12	4							
L. C. Hart	10	10	11	12	11	10	11	11				
A. Standifer	11	10	12	12	11	10	2	6	3			
H. Fruhn	10	12	1	Va				T.O.				
G. Harlan	11	9	7	16	15	16	9	3	9			
P. T. Blankenship	10	11	7	Va				1				
D. O'Neal	10	13	2					T.O.				
R. H. Ireland	11	11	7	Va				T.O.				
B. Pool	11	12	6					T.O.				
Lloyd Gettle	12	9	2	3				T.O.				
Simon Hogue	5	15	4	Va				T.O.				
S. Harlan	11	10	1					T.O.				
Chas. Hefner	12	13	7					T.O.				
W. T. Morgan	14	11	5					T.O.				
W. C. Hefner	14	6						T.O.				

(Testimony of Herman P. Smith.)

Number of Days Worked—(Continued))									
Pay period ending.....	1941		1941		1941		1941		1941
	June 15	June 30	July 15	July 31	Aug. 15	Aug. 31	Sept. 15	Sept. 30	
Name									Oct. 15
Alton O'Neal	12								Oct. 31
Marland Marshall	10	9							
L. R. O'Neal	12	14	1						
Ray Adcock	8	15	4						
James Anthony	6							T.O.	
Tom Herring	15	15	15	16	15	9	15	15	12
G. P. Drinkard	10	11		12	12	15	13	8	8
H. C. Fredinburg	12	7	2	9	8	12	7	6	1
Jess Cardwell	6	3			Va			12	
Donald Woodridge	13	14							
Jack Johnson	11	12	3	1				T.O.	
Alfred Brown	10	7							
Gilbert Cardwell	4								
N. Ballard	12	13		15	13	3	14	13	14
S. P. Smyser						1	5		
William Hulme				12	12	10	8	4	
J. E. Clifton				14	13	14	12	12	12
C. H. Johnston				13	13	15	12	12	12
J. C. Oliver				13	13	13	12	12	7
Roy Davis	14	12	10	13	13	11	11	10	2

(Testimony of Herman P. Smith.)

Q. (By Mr. Smith): Now, Mr. Smith, I will show you the respondent ice company's Exhibit 5 for identification, and I might read it for the benefit of counsel.

Trial Examiner Mouritsen: Give him a copy of it.

(Document handed to Mr. Ryan.) [828]

Q. (By Mr. Smith): What do those X's in parenthesis after the several names in Column 1 indicate?

A. Those were men that made application—correction. Those were employees that made application to join the Teamsters Union and continued as employees after September 26, 1941. [832]

Trial Examiner Mouritsen: Does this document, Mr. Smith, show the names of all employees who worked during the 1940-'41 season?

The Witness: No, it just shows that that—

Trial Examiner Mouritsen: That is sufficient. Does it contain the names of all employees who worked during the [834] 1941-'42 season?

The Witness: It does not. It shows the carry-over.

Mr. Smith: I might state that I can go through the list and take each name and prove the fact as shown on this chart with each name. It would be very tedious and when you got through with it you would get the same result that you have here.

This is a summary that we spent time to get up to assist the Board in gathering the facts for what they are worth.

(Testimony of Herman P. Smith.)

Now, if you will read it carefully it shows in each column what it purports to show. For instance, Column 1——

Trial Examiner Mouritsen: I think, as you say, it sets out the information it purports to show.

Mr. Smith: It doesn't mislead anyone.

Column 1 only intends to show those who were actually working or on vacation, or those that were put back later as of September 26.

Trial Examiner Mouritsen: I will overrule the objection and receive it in evidence.

(Thereupon the document referred to was received in evidence and marked Respondent Holtville Ice and Cold Storage Company Exhibit No. 5.)

(Testimony of Herman P. Smith.)

RESPONDENT ICE COMPANY

EXHIBIT No. 5

EMPLOYMENT RECORD

HOLTVILLE ICE & COLD STORAGE COMPANY

Showing: Column I as of September 26, 1941, which includes those on vacation or temporarily off because of slack: Column II, record of same employees who worked in the 1940-41 ice season; Column III, record of same employees who continued to work in the 1941-42 ice season.

Note: There were also additional employees in the 1941-42 season. This record was made to show only the record of old employees who worked both before and after the installation of the electric power in September of 1941.

Column I	Column II	Column III
Employees as of Sept. 26, 1941	Employees who worked 1940-41 ice season	Employees who worked 1941-42 ice season
H. G. Miller (X)	X	Was requested to return
M. K. Stout (X)	X	X
H. T. Pool	X	
L. C. Hart	X	
A. Standifer	X	
H. Fruhn (X)	X	X
Geo. Harlan	X	X
P. T. Blankenship	X	
Dan O'Neal	X	X
Bailey Pool	X	
R. H. Ireland (X)	X	X
Lloyd Gettle	X	X
Simon Hogue	X	X
Stanley Harlan (Army)	X	X
Chas. Hefner	X	X
W. T. Morgan	X	X
W. C. Hefner	X	X
Alton O'Neal	X	X
Tom Herring (X)	X	X

(Testimony of Herman P. Smith.)

Column I Employees as of Sept. 26, 1941	Column II Employees who worked 1940-41 ice season	Column III Employees who worked 1941-42 ice season
G. P. Drinkard (X)	X	X
H. C. Fredinburg	X	
Jess Cardwell	X	X
Jack Johnson	X	X
N. Ballard	X	X
J. E. Clifton	X	X
C. H. Johnston	X	X
J. C. Oliver	X	X
Roy Davis	X	
<hr/> Total Column I: 28	<hr/> Total Column II: 28	<hr/> Total Column III: 20

(X) Made application to union but continued as employees.

Mr. Smith: I think that is all the questions I have of this witness. [835]

I will state, Mr. Ryan, that the witness has prepared certain payrolls, showing the names on those payrolls for certain dates that you requested him to furnish.

Trial Examiner Mouritsen: We will take a 10-minute recess at this time.

(Short recess.)

Trial Examiner Mouritsen: The hearing will be in session.

Cross Examination

Q. (By Mr. Ryan): Mr. Smith, I show you a document that has been marked for identification as Board's Exhibit 11, which purports to be a

(Testimony of Herman P. Smith.)

payroll for the period ending January 1, 1941, and ask you to look at that and tell me whether or not you had that made up.

(Handing exhibit to the witness.)

Trial Examiner Mouritsen: Marked Board's Exhibit 11 for identification.

Mr. Ryan: For identification, yes.

The Witness: I did.

Q. (By Mr. Ryan): Mr. Smith, I show you Board's Exhibit 10 in evidence and ask you whether or not that is a list of the employees that began the operations of the plant in the fall of 1940.

(Handing exhibit to the witness.)

A. (No answer) [836]

Q. Beginning the '40-'41 season.

A. Will you read the question?

(Question read.)

A. It is a list taken from my records showing these to be the employees.

Q. Now, I show you——

Trial Examiner Mouritsen: And it was made up by you at Mr. Ryan's request?

The Witness: That is right, from my records.

Q. (By Mr. Ryan): Now, I show you Board's Exhibit 11 for identification, which purports to be the payroll for the company for the period ending January 1, 1941, and ask you to look at that and tell us whether or not that is a document prepared by you.

(Handing exhibit to the witness.)

(Testimony of Herman P. Smith.)

A. As near as I can determine, it is.

Trial Examiner Mouritsen: Don't you recall preparing it?

The Witness: I prepared the document, yes; I don't know what has happened to it since it left my hands.

Trial Examiner Mouritsen: Does it appear to be in any different state?

The Witness: No, it does not.

Q. (By Mr. Ryan): Now, will you look at Board's Exhibit 10 and Board's Exhibit 11 and indicate whether there is any [837] change in the list between the period reflected in Board's Exhibit 10 and the payroll period reflected on the payroll of January 1, 1941, and indicated what change, if any?

A. Well, there is a change in the men listed under the heading, "Can pullers."

Q. First of all, is there any change in the list of total employees? There are 19 employees, are there not, on Board's Exhibit 10? A. Correct.

Q. And how many are there on Board's Exhibit 11? A. 20.

Q. So there is an addition of 1 employee to the total list, is that right? A. That is right.

Q. And who is that employee?

A. (No answer.)

Q. That is J. Cardwell, is it not?

A. I will have to check them off—yes, Cardwell.

Q. And one other change in the arrangement; is that S. Hogue who was in the can pulling department as of the time when the operations began in

(Testimony of Herman P. Smith.)

the fall of 1941—for the season '40-'41—by January 1, 1941 he had been moved down to the store room, had he not, from the can pulling department? He is shown under store room.

A. He is shown under store room, yes. [838]

Q. On January 1, 1940? A. Yes, sir.

Mr. Ryan: I offer Board's Exhibit 11 in evidence.

Mr. Petersen: No objection.

Mr. Smith: No objection.

Mr. Whitelaw: No objection.

Trial Examiner Mouritsen: Received as Board's Exhibit 11.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 11.) [839]

BOARD'S EXHIBIT No. 11

Holtville Ice and Cold Storage Co.

Holtville, California

February 11, 1943

Payroll for Period Ending Jan. 1, 1941

Engine Room:

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

(Testimony of Herman P. Smith.)

Can Pullers

G. Harlan

H. Fruhn

A. Standifer

P. Blankenship

Storeroom:

S. Hogue

L. Gettle

R. H. Ireland

B. Pool

Platform & Delivery:

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

J. Cardwell.

Garage Mechanic:

N. Ballard

[In pencil]: 20

Mr. Smith: And that is Board's Exhibit 12.

Mr. Ryan: Yes.

Mr. Smith: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: It is received.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 12.)

(Testimony of Herman P. Smith.)

BOARD'S EXHIBIT No. 12

Holtville Ice and Cold Storage Co.

Holtville, California

February 11, 1943

Payroll for Period Ending Feb. 1, 1941

Engine Room

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers

G. Harlan

S. Hogue

H. Fruhn

A. Standifer

P. Blankenship

Storeroom

L. Gettle

R. H. Ireland

W. T. Morgan

S. Harlan

B. Pool

C. Hefner

D. ONeal

G. Miller

(Testimony of Herman P. Smith.)

Platform & Delivery

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

J. Cardwell

J. Thiesen

F. Van Der Linden

Garage Mechanic:

N. Ballard

[In pencil]: 27

Trial Examiner Mouritsen: Was Board's Exhibit 12 prepared under your direction and supervision, Mr. Witness?

The Witness: It was.

Trial Examiner Mouritsen: Are you satisfied that it correctly reflects the employment records of the company?

The Witness: As near as my records indicate.

Trial Examiner Mouritsen: And the information on Board's Exhibits 10, 11, and 12 were taken from the employment records of the company?

The Witness: That is right.

Trial Examiner Mouritsen: I have already received the exhibits. You may proceed.

Q. (By Mr. Ryan): I now show you Board's Exhibit 13 for identification, which purports to be a payroll for the period ending February 15, 1941, and ask you whether or not that was a document

(Testimony of Herman P. Smith.)

prepared by you or under your supervision from the payroll records of the company.

(Handing exhibit to the witness.) [840]

A. It was.

Q. And does it correctly reflect the company's payroll records? A. It does.

Mr. Ryan: I offer it in evidence as Board's Exhibit 13.

Trial Examiner Mouritsen: There being no objection, it is received.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 13.)

BOARD'S EXHIBIT No. 13

Holtville Ice and Cold Storage Co.

Holtville, California

February 11, 1943

Payroll for Period Ending Feb. 15, 1941

Engine Room

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan

H. Fruhn

(Testimony of Herman P. Smith.)

A. Standifer

P. Blankenship

D. ONeal

Storeroom

L. Gettle

R. H. Ireland

W. T. Morgan

S. Harlan

B. Pool

S. Hogue

Platform & Delivery:

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

R. C. Hefner

W. Hearen

G. Miller

J. Cardwell

~~J. Cardwell~~

J. Thiesen

F. Van Der Linden

Garage Mechanic:

N. Ballard

[In pencil]: 28

Mr. Smith: Mr. Ryan says, "From the company payroll records." It should be brought out it does not include office help or superintendents.

Mr. Ryan: I understand that.

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: But it still accurately reflects the payroll records.

Mr. Smith: Yes.

Trial Examiner Mouritsen: I understand it is not a complete payroll record.

Mr. Ryan: It is incomplete only so far as it does not reflect office and supervisory employees.

Trial Examiner Mouritsen: Very well, it has been received.

Mr. Smith: And that is true of the preceding exhibits, 10, 11 and 12. [841]

Mr. Ryan: So stipulated.

Q. (By Mr. Ryan): I show you first of all——

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit 14 for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 14 for identification.)

Q. (By Mr. Ryan): I show you a document which I have had marked for identification as Board's Exhibit 14, which purports to be a payroll for the period ending March 1, 1941, of the Holtville Ice and Cold Storage Company.

I will ask you whether or not that is a payroll prepared under your supervision from the payroll records of the company.

A. (No answer.)

Mr. Whitelaw: Would you mind adding——

Mr. Ryan: Of all the employees except supervisory employees and office employees as of the period reflected on the document.

A. It is.

(Testimony of Herman P. Smith.)

Mr. Ryan: I offer it in evidence as Board's Exhibit 14.

Trial Examiner Mouritsen: There being no objection, it is received as Board's Exhibit 14 in evidence.

Mr. Smith: No objection. [842]

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 14.)

BOARD'S EXHIBIT No. 14

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Mar. 1, 1941

Engine Room:

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan

H. Fruhn

A. Standifer

P. Blankenship

D. ONeal

(Testimony of Herman P. Smith.)

Storeroom:

L. Gettle
R. H. Ireland
W. T. Morgan
S. Harlan
B. Pool
S. Hogue
W. Hearen

Platform & Delivery:

E. Broderick
T. Herring
G. P. Drinkard
H. C. Fredinburg
R. C. Hefner
J. Cardwell
J. Thiesen
F. Van Der Linden

Garage Mechanic:

N. Ballard

[In pencil]: 27

Trial Examiner Mouritsen: Mr. Ryan, I think you referred to Board's Exhibit 11 as being dated January 1, 1941, or showing the payroll period as of January 1, 1940. I think it is clear that it should be January 1, 1941, is that correct?

Mr. Ryan: That is correct. If I have been referring to it erroneously, I want the record to correctly show that Board's Exhibit 12 is for the

(Testimony of Herman P. Smith.)

payroll period February 1, 1941, Board's Exhibit 13 in evidence is for the payroll period ending February 15, 1941, qualified as we have previously stipulated to indicate that office employees and supervisory employees are not included thereon.

Board's Exhibit 13 is for the payroll period ending February 15, 1941.

Board's Exhibit 14 is for the payroll period ending March 1, 1941.

Mr. Reporter, will you please mark this document as Board's Exhibit 15?

(Thereupon the document referred to was marked as Board's Exhibit No. 15 for identification.)

Q. (By Mr. Ryan): Mr. Smith, I show you a document which I have had marked as Board's Exhibit 15 for identification, which purports to be a payroll for the period ending January 1, [843] 1942, and which I also understand includes all employees except office and supervisory employees, is that correct?

(Handing exhibit to the witness.)

A. As taken from my records it is correct.

Q. At your direction and under your supervision?

A. That is right.

Mr. Ryan: I offer in evidence Board's Exhibit 15.

Trial Examiner Mouritsen: Hearing no objection it is received in evidence as Board's Exhibit 15.

(Thereupon the document referred to was

(Testimony of Herman P. Smith.)

received in evidence and marked as Board's
Exhibit No. 15.)

BOARD'S EXHIBIT No. 15

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Jan. 1, 1942

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

L. Gettle

D. Stewart

Storeroom:

R. H. Ireland

W. T. Morgan

G. P. Drinkard

C. Hefner

H. Fruhn

Platform & Delivery:

T. Herring

J. Garber

Garage Mechanic:

N. Ballard

[In pencil]: 13 in unit

(Testimony of Herman P. Smith.)

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit 16 for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 16, for identification.)

Q. (By Mr. Ryan): I have had marked for identification as Board's Exhibit 16, a document which purports to be the payroll for the period ending February 1, 1942, including all employees except office employees and supervisory employees, is that correct?

(Handing exhibit to the witness.)

A. Correct.

Q. And that record was taken from the payroll records of the company, was it not, under your supervision and direction? [844]

A. Pardon me a minute, will you read the next to the last question over again?

(Question indicated read.)

The Witness: Correct.

Mr. Ryan: I offer Board's Exhibit 16 in evidence.

Trial Examiner Mouritsen: There being no objection, it is received in evidence as Board's Exhibit 16.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 16.)

(Testimony of Herman P. Smith.)

BOARD'S EXHIBIT No. 16

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Feb. 1, 1942

Tank Room:

M. K. Stout

S. Hogue

L. Gettle

G. Harlan

Storeroom:

R. H. Ireland

W. T. Morgan

A. ONeal

O. Stephens

D. Stewart

A. Hensly

G. Daily

L. E. Hodges

C. D. Allen

R. S. Brixey

Platform & Delivery:

S. Harlan

G. P. Drinkard

W. Fauldner

C. Hefner

J. Garber

W. C. Hefner

T. Herring

(Testimony of Herman P. Smith.)

Garage Mechanic:

N. Ballard

Electrician:

C. H. Johnston

[In pencil]: 22 in unit

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit 17 for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 17, for identification.)

Q. (By Mr. Ryan): I have had marked for identification as Board's Exhibit 17 what purports to be the payroll for the period ending February 15, 1942, of all employees of the company, except office employees and supervisory employees, and I show it to you, Mr. Smith, and ask you whether or not it was prepared from the payrolls of the company and under your supervision.

(Handing exhibit to the witness.)

A. It was.

Q. And is it a correct reflection of your payroll records of that period? A. It is. [845]

Mr. Ryan: I offer it in evidence as Board's Exhibit 17.

Trial Examiner Mouritsen: There being no objection, it is received and marked as Board's Exhibit 17.

(Testimony of Herman P. Smith.)

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 17.)

BOARD'S EXHIBIT No. 17

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Feb. 15, 1942

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

L. Gettle

Storeroom:

R. H. Ireland

W. T. Norgan

D. ONeal

O. Stephens

A. Hensly

G. Daily

C. D. Allen

R. Brixey

Platform & Delivery:

S. Harlan

G. P. Drinkard

W. Fauldner

C. Hefner

W. C. Hefner

T. Herring

J. Raine

(Testimony of Herman P. Smith.)

Garage Mechanic:

N. Ballard

Electrician:

C. H. Johnston

[In pencil]: 20 in unit

Mr. Ryan: May I go off the record for a minute?

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Q. (By Mr. Ryan): Have you got your Social Security record book here with you, Mr. Smith?

A. I have.

Q. I wonder if you would get it, please?

Trial Examiner Mouritsen: Mr. Ryan, would it save time if you went over this record with the witness before asking him to testify as to what it shows?

Mr. Ryan: I think, perhaps, we could, but I will ask him some questions about it first.

Q. (By Mr. Ryan): Mr. Smith, as I understand it, isn't it true that—strike that out.

Mr. Smith, what was the company's procedure with regard to giving vacations in previous years, up to the fall of 1941?

A. Gave one week vacation. [846]

(Testimony of Herman P. Smith.)

Q. And was that vacation with pay or without pay?

A. What constitutes a vacation? I always thought it was with pay if it was a vacation. It was one week with pay.

Q. Was it customary for the company to give one week with pay and one week without pay—two weeks—one week with pay and one week without?

A. I don't know as that was a common practice. I recollect one summer that that policy was followed.

Q. Now, what was the provision of the company with respect to who would get vacations and who would not get vacations with pay?

A. I don't recollect there being any set policy that was followed.

Q. Now, before a man could take a vacation and get paid while he was on his vacation, what requirements, if any, was there, with respect to the amount of time he must have had working for the company during the period preceding that?

A. I have no knowledge as to there being any specified time.

Q. In other words, would you say that a man who was hired, for example, only three weeks during a vegetable season, and who had never worked for the company before, would be given a vacation of a week with pay?

A. Well, if he had been hired three weeks previous to the close of our shipping season I would say that he wouldn't be. [847]

(Testimony of Herman P. Smith.)

Q. Now, will you look at Respondent's Exhibit 6 in evidence, Mr. Smith. You will note that after the name H. Fruhn and in the column entitled or headed "July 31" for the year 1941 are the letters "Va." What does that mean—does that have reference to the word "vacation"?

A. It is with reference to their having received one week's vacation pay, I gathered. In the time cards there was an X card that was put in and it is "week vacation" figured, and that was included with the time that he worked, if any.

Q. What does that mean? Does that mean the man was on vacation, or does it mean that he went on vacation as of that time?

Mr. Smith: You mean July 31.

Mr. Ryan: Yes, referring now to Fruhn.

The Witness: It is evident that he put in no time during the last half of July.

Q. (By Mr. Ryan): So he was on vacation and you have the word "vacation" there.

A. Yes, evidently he was given some vacation pay.

Q. Now, the next time you see the word "vacation" on that document, which is in evidence as Company's Exhibit 6, is following the name of Perry T. Blankenship, is that not right?

A. Correct. [848]

Q. And then immediately following Blankenship is the name of D. O'Neal, and the column entitled July 31, or headed, July 31, does not have anything but a blank there, and that indicates, does it not, that

(Testimony of Herman P. Smith.)

O'Neal's employment terminated on July 15, or during the payroll period up to July 15, and that he left the employ of the company and was not on vacation, isn't that right?

A. No, it doesn't. The boy that I had go over these time cards didn't go back to the time cards and check them all. This information as he compiled it, and I am not sure of those four items as to just what that does indicate, but evidently he took that off of a card.

Trial Examiner Mouritsen: Does Respondent's Exhibit 6 reflect the only employees who received vacations during that period?

The Witness: I don't think it does. It would have to be checked from that angle. I don't know.

[849]

Mr. Ryan: Mr. Reporter, will you mark this as Board's Exhibit 18 for identification. [867]

(The document referred to was marked as Board's Exhibit No. 18, for identification.)

Q. (By Mr. Ryan): Mr. Smith, I show you a document that has been marked Board's Exhibit 18 for identification, entitled "Employees who received vacation pay in 1941", and ask you to look at it, and tell us whether or not that document was prepared under your instructions (handing exhibit to the witness).

A. That is right, it was.

Q. And is it a correct statement as to the employees who received vacations during the year?

(Testimony of Herman P. Smith.)

A. As indicated by our records.

Q. 1940-41?

A. As indicated by our records, yes.

Mr. Ryan: I offer Board's Exhibit 18 in evidence.

Trial Examiner Mouritsen: Any objection?

Mr. Smith: No objection.

The Witness: On the original, of course, our letterhead appears in the corner, on these it doesn't.

Trial Examiner Mouritsen: That doesn't make any difference; the information is the important matter.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: I take it Mr. Smith, this information was taken from your employment records.

The Witness: From the time cards—it appears on the [868] time cards, vacation pay, indicating those that received vacation pay.

Trial Examiner Mouritsen: And you are satisfied from your examination of those time cards that it is a complete list of all those who received vacation pay during 1941?

The Witness: Yes.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 18.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit 18, was received in evidence.)

Q. (By Mr. Ryan): Mr. Smith, the employment records of the company indicate, do they not,

(Testimony of Herman P. Smith.)

that at the beginning of the operations in the fall of 1940, for the 1940-41 season, M. K. Stout, H. G. Miller and E. S. Jones and H. T. Pool, began the operations of the engine room, is that right, those four?

A. Well, I believe so, although I don't have all those definitely in my mind.

Q. I show you the payroll record for the fall of 1940, Board's Exhibit 10 in evidence. That is the list of employees that began the operation of the plant, is it not, up to that period (handing exhibit to the witness)?

Trial Examiner Mouritsen: I think that has already [869] been established, Mr. Ryan.

The Witness: I was just checking. Yes, those four men began as engineers or in the engine room.

Your question covers this entire schedule, does it? I believe you just specified those four men.

Q. (By Mr. Ryan): Because I want to ask you something about them.

E. S. Jones appears in that group. Have you now got your records prepared which would show when E. S. Jones left the employ of the company in that year?

A. I have the information but it is not in presentable form.

Q. Do you have it? A. Yes, I can get it.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

The Witness: My records show that Jones was

(Testimony of Herman P. Smith.)

not on our payroll after May 1, 1941. The last pay period worked was the last half of April, 1941.

Q. (By Mr. Ryan): Is it a fact that he quit the employ of the company and obtained a job elsewhere about that time, as his reason for leaving the employ of the company?

A. My understanding is that he went into business for himself. [870]

Trial Examiner Mouritsen: The principal thing, so far as we are concerned, is whether he quit or not.

The Witness: Yes, he quit.

Trial Examiner Mouritsen: He is not listed on Board's Exhibit 18.

The Witness: No.

Q. (By Mr. Ryan): And Board's Exhibit 18 is a group of employees who received vacation pay. I understand that he left and did not receive vacation pay, isn't that right?

A. He did not receive vacation pay.

Q. He had worked all the times during that season up to the time of his employment terminated in the engine room, isn't that right? A. Yes.

Q. And that is also true of M. K. Stout, H. G. Miller, and H. T. Pool?

Trial Examiner Mouritsen: That is a rather confusing question.

Mr. Whitelaw: I don't know what he means by it.

Mr. Ryan: I will strike it.

Q. (By Mr. Ryan): M. K. Stout began in the engine room at the beginning of operations and he

(Testimony of Herman P. Smith.)

continued, also, did he not, through the entire season in that same department? A. He did.

Q. And that is also true of H. G. Miller, is it not, that [871] he began in that department and continued all during the year?

A. That is right.

Q. And H. T. Pool, is the same thing true?

A. That is right.

Q. Now, looking at the engine maintenance department, the plant began operating with M. Wooldridge and L. C. Hart. Can you tell us when M. Wooldridge left the employ of the company?

A. During the last half of August, 1941.

Q. And he hasn't worked for the company since?

A. He has not.

Q. He obtained a job, I believe you said, some place else?

A. That is right—that is my understanding.

Trial Examiner Mouritsen: What he did so far as the company was concerned—did he quit?

The Witness: He quit, yes.

Q. (By Mr. Ryan): He had worked at all times in the engine maintenance room from the beginning of operations until he quit in August, isn't that right? A. He had.

Q. L. C. Hart also begun in the engine maintenance and remained there during the entire time—during his entire employment for the year, is that correct? A. 1941. [872]

Q. That is doing repair work?

A. (No answer.)

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: For the 40-41 season?

The Witness: Correct, he had.

Mr. Whitelaw: Off the record. Might we ask what Mr. Ryan means by "engine maintenance room?" Is there a classification of that nature?

Mr. Ryan: There is such a classification on the payroll.

The Witness: Classification engine maintenance.

Trial Examiner Mouritsen: That is under engine room. I think it is clear.

Q. (By Mr. Ryan): In the can pulling department, the company began operating in the fall of 1940-41 season with G. Harlan——

Trial Examiner Mouritsen: With the employees listed on Board's 10 under "can pullers."

Mr. Ryan: Yes.

The Witness: Is there a question before me?

Q. (By Mr. Ryan): They began operating with that crew, didn't they? A. Yes.

Q. And those employees, with the exception of S. Hogue, continued to operate in that department during the entire season, isn't that right?

A. You mean that they were not off? Will you state the [873] last question again?

Mr. Ryan: Will you read the question?

(Question read.)

Q. (By Mr. Ryan): Of the 1940-41 season?

A. Yes.

Q. S. Hogue continued to work for the company but was transferred back and forth between the

(Testimony of Herman P. Smith.)

can pulling department and the storeroom, was he not, during that season? A. '40-41 season?

Q. Yes.

A. My recollection is that there was some shifting that occurred between the can pulling and storeroom.

Trial Examiner Mouritsen: So far as he was concerned?

The Witness: So far as this Mr. Hogue was concerned, yes.

Q. (By Mr. Ryan): Now, the storeroom, looking at Board's Exhibit 10, shows the employees that began the operations of the plant for the fall of 1940—the beginning of the 1940-41 season?

A. Is that a question?

Trial Examiner Mouritsen: It does not need to be if you want to tell him that that is what the record shows so far.

Q. (By Mr. Ryan): Those three employees continued to operate in that same department all of the season, did they [874] not?

A. Well, I believe so, although the record will show.

Q. And with respect——

Mr. Whitelaw: Let him finish his answer, will you?

The Witness: I had finished.

Q. (By Mr. Ryan): The persons listed on Board's Exhibit 10 in the platform and delivery department, continued, did they not, to operate in that department during the entire season?

(Testimony of Herman P. Smith.)

A. As near as I recollect they did.

Mr. Whitelaw: Mr. Ryan, may we go off the record?

(Discussion off the record.)

On the record.

Q. (By Mr. Ryan): Mr. Smith, with respect to this Jack Garber, who works in the office—is that right?

A. He did work in the office and on the platform.

Q. And he began working there in the spring of 1941, I believe you said, is that right?

A. Now, if you want me to give you a little bit of the history, he began the 1st of September in '41.

Q. 1941?

A. That is right, and he followed Everett Broderick—He took the job that Everett Broderick had.

Q. Is that the E. Broderick shown here?

A. Yes, on the platform. This is under platform delivery. [875]

Q. Are you sure about the year, Mr. Smith?

A. Yes, I am sure.

Q. September would be just a few days before Mr. Davis left the employ and I understood he had been working some months before then?

A. No, September 1st. He worked part time and went to school—worked part time and he started in and took Broderick's place to do my janitor work—that was really the main item, was

(Testimony of Herman P. Smith.)

janitor work around there, and he was in school and put in just part time.

Trial Examiner Mouritsen: He did not start as early as May doing that?

The Witness: No.

Q. (By Mr. Ryan): And have you his record there in the book? A. I have.

Q. Will you look at it and tell us when he began to work?

Mr. Whitelaw: In what capacity?

Mr. Ryan: In any capacity.

The Witness: He put in 64 hours the first half of September.

Q. (By Mr. Ryan): 1941? A. Yes.

Trial Examiner Mouritsen: Does that cover this part time work he did while going to school? [876]

(No answer.)

Q. (By Mr. Ryan): Then did he thereafter at any time begin to work steady for the company?

A. He did at approximately January 15, 1942.

Q. And how long did he continue to work steadily?

A. Until he was drafted, which was just a couple of weeks back.

Q. And what did he do after he began to work steadily, did he continue on the same job or was he transferred back and forth? Will you explain that to us?

A. No. He continued doing the same kind of work.

Q. And what kind of work was that?

(Testimony of Herman P. Smith.)

A. Well, just sort of general flunkey on the distribution end, if you want to put it in plain words. There was janitor's work in the office that had to be taken care of and our clear ice quarters had to be swept up and cleaned up and there was the crushing of clear ice and cutting up the blocks of clear ice preparing them for sale, and I believe he looked after the loading out of the clear ice truck.

Q. Did he help you with the book records?

A. Well, he did. He kept the white ice sales ledger—that is, he made up my bills for the vegetable packing sheds.

We collect weekly and he took care from day to day of making up the summary for our white ice sales for that particular day.

Q. That had been work that had previously been done by [877] H. L. Davis, as part of his job?

A. Yes; he had handled that ice in connection with the delivery of vegetable ice.

Q. Davis also did other work around there which was taken over and done by Garber after he came to the employ of the company, is that right?

A. Very little other than that.

Q. How much did Garber receive from the company in the way of wages per month or hour—how was he paid?

Mr. Whitelaw: When?

Mr. Ryan: When he began to work in September, 1941.

(Testimony of Herman P. Smith.)

The Witness: He received 40 cents an hour. That was his starting wage.

Q. (By Mr. Ryan): What was he receiving when he left the employ of the company?

A. 65 cents an hour.

Q. For a 40-hour week? A. Yes.

Q. And how long had he been receiving 65 cents an hour at the time that he left the employ of the company?

A. Since, I believe, since November—I think since November 1, 1942.

Q. Did he jump from 40 cents up to 65 cents?

A. No; he went from 40 to 45 and to 50; 55 to 60 and up to 65. That was the understanding with those fellows [878] when I put them on, that they would start in at 40 cents and as they became familiar with the work and their ability increased, their rate would increase also.

Q. Now, after Davis left the employ of the company, the work which he had been doing out on the platform and delivery was thereafter done by Mr. Tom Herring also, was it not?

A. Yes, the work connected with the getting of the ice to the sheds was handled by Mr. Herring.

Q. He took charge of the drivers?

A. That is right, he was responsible for getting out the ice.

Q. He supervised the operation of that department, is that right?

A. Yes, I believe he did.

(Testimony of Herman P. Smith.)

Q. About when did he take over charge of the department? A. January 1, 1942.

Q. Davis had done that for the preceding year?

A. 1941, yes.

Q. What was Tom Herring paid immediately when he began taking over that job of Davis'?

Mr. Whitelaw: Haven't you a record you can refer to, Mr. Smith?

The Witness: It doesn't show the rate per hour.

Q. (By Mr. Ryan): Was he paid by the month or hour after he took that job over, Mr. Herring?

[879]

A. He was paid by the month—\$165 a month.

Q. And since taking that job over has Mr. Herring continued in the employ of the company throughout the entire year? I believe you said he began in January, 1942? A. That is right.

Q. On that job, and has he continued 12 months a year thereafter?

A. Let me qualify this answer by saying he was a clear ice peddler after the vegetable ice shipping season of 1942.

Q. Is he paid on the basis of what he sells then?

A. That is right.

Q. Or does he continue to receive his \$165 a month?

A. No, on what he sells, the same as the other clear ice delivery men.

Q. Can you tell by looking at your records there, the last month in 1942 in which he received \$165 a month?

(Testimony of Herman P. Smith.)

A. The month he received \$165—there is a change in his salary during the season. The last month that he received his monthly salary from the company was, if I remember correctly, the first half of June. He was getting \$92.50 a pay.

Q. His salary then had been raised, as I take it?

A. Yes, sir.

Q. From \$165 up to—— A. \$185.

Q. Twice ninety-two and a half? [880]

A. Yes, \$185. And the first half of June he was paid for approximately one week at the rate of \$185 a month.

Q. And then what time again in 1942 did he begin, if at all, to receive his monthly salary after he had sold clear ice?

A. It seems to me November 15th. That is the pay starting November 15th.

Trial Examiner Mouritsen: The starting or ending of that pay.

The Witness: Starting November 15th and ending December 1st.

Q. (By Mr. Ryan): When he was put back and started to receive a monthly salary, is that right?

A. That is what the record so indicate.

Q. What did he receive then as a monthly salary starting as of that time?

A. Well, under the new pay schedule that was put into effect last fall he was given a 10 per cent increase, which is \$18.50, over the \$185—\$202, I think, and something.

(Testimony of Herman P. Smith.)

Q. Can you check there and find out when he began or he started again at \$165 in January, 1942, can you tell us then how soon thereafter he received a raise and what it was?

A. Well, I don't remember the exact history, but my records indicate, starting in with April 1st, he received [881] \$185 a month.

Q. That is the first time he is shown with any increase over \$165?

A. Well, evidently February and March—possibly he was paid \$165. My records really don't indicate how it was paid. There is some variation in the amount of money he received. He may have been paid \$165 plus additional wages for hours put in over a certain fixed figure. I am not sure about that. It doesn't indicate here.

Q. It shows him earning more than \$165 a month between January and April, does it?

A. That is right.

Q. How much more was the additional amount you have listed on your records, if any?

A. Well, for the pay period ending January 15th he got a check for \$102.50, and the pay period ending February 28th he got a check for \$102.50. For the pay period ending March 15th he got a pay check for \$92.50.

For the pay period ending March 31st he got a check of \$118.07. There may have been some adjustment made there in some manner or another, but this record here does not indicate just the whys and wherefores.

(Testimony of Herman P. Smith.)

On April 15th his check averaged off to \$92.50 and continued that way on through to the first week in June, 1942. [882]

Q. The last year that Davis worked for you he got \$160 or \$165? A. \$160, I believe.

Q. And he got that on a basis of a 12-months period, is that right—that is, he was to be paid that the year around?

A. I had no understanding that that was the case.

Q. As a matter of fact you paid him all the time \$160 a month, didn't you, month after month?

A. From the time that he——

Q. During the vegetable season?

A. From the time that he started in on a \$160 a month salary, yes, he was paid that straight through.

Q. Up to the time he left the employ of the company? A. Yes. [883]

THOMAS FRANKLIN HERRING,

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Trial Examiner Mouritsen: Your name is Thomas Herring?

A. Thomas Franklin Herring.

(Testimony of Thomas Franklin Herring.)

Direct Examination

Q. (By Mr. Yeager): Where are you employed Mr. Herring? A. Holtville Ice Company.

Q. When did you first commence work there?

A. About 1932, August 26th, I believe.

Q. And were you working there during the season of 1941? A. Yes, sir.

Q. In what capacity at that time?

A. Well, I was hauling vegetable ice in the winter and clear ice in the summertime. [886]

Q. You were one of the truck drivers, were you not? A. Yes, sir.

Q. And do you recall the period when a change-over was made at the Holtville Ice Company?

A. Yes, sir.

Q. From Diesel to electricity? A. Yes, sir.

Q. And were you employed at that time or were you on vacation?

A. Well, I was just winding up the clear ice deliveries and working a little for them, part time.

Q. And that work was done under contract, was it not? A. Yes, sir.

Q. With whom was that contract?

A. Reed Manchester.

Q. And what work did Reed Manchester do there?

A. Well, he was doing construction work in the storage room.

Q. And was any work contracted to the York people there? A. Yes.

(Testimony of Thomas Franklin Herring.)

Q. Did the York people work at the same time the Reed Manchester people were working?

A. Yes, sir.

Q. And were you out there at the plant during that period—during the period that that construction was going on? [887]

A. Yes, sir.

Trial Examiner Mouritsen: You mean part of the time you were selling this clear ice and part of the time you were working for Manchester, or you were working for the Holtville Ice Company?

The Witness: Well, I would go out on the route of a morning early and get through about 10 or 9 and come back there and go to work under Reed Manchester.

Q. (By Mr. Yeager): Did he pay you or did the Holtville Ice Company pay you?

A. He paid me.

Q. Did you work for the York people at any time during that period?

A. No, I did not.

Q. During the time the York people were there did you have any conversations with any of the employees of the York people or overhear any conversations with their men?

A. No, I had just general talks with them at noon hour or something like that.

Q. About what time was that—can you fix a date or month?

A. Well, it was along in September, I would say. I couldn't say any particular date.

Q. Do you recall who was present when you were talking with the men?

A. No, I don't

[888]

(Testimony of Thomas Franklin Herring.)

Q. And the conversations were between you and the employees of the York Company?

A. Yes, sir.

Trial Examiner Mouritsen: Do you know any of their names, those with whom you talked?

The Witness: No, I don't. They were just there for a short time and I didn't get that well acquainted with them.

Q. (By Mr. Yeager): Tell as best you can recall what your conversation was with those men.

Mr. Ryan: I am going to object, Mr. Examiner, unless he identifies the people with whom he talked; it would be impossible for us to go into that matter thoroughly unless we know who he was talking to.

Mr. Yeager: He has fixed it as closely as he can.

Mr. Ryan: It is immaterial as far as I am concerned.

Trial Examiner Mouritsen: I will permit him to go into it; you may answer.

The Witness: Well, the best I recall we would be eating at noon and have a talk about the work that was going on, and it was only about, I believe, three or four of them working first. There was only two of the welders working and they refused to work without their union helpers, so they quit their operation for a day or two until they could get their own helpers. [889]

The company wanted to put in common labor men that they had around there to work at that. It was slack season for them, but they wouldn't go for that.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): You mean the men from the Holtville Ice Company that were there?

A. Yes, they was going to help the welders.

Q. And the welders refused to work with them?

A. Yes, sir.

Mr. Ryan: I object to all this line of questioning on the ground that so far, he has stated nothing but conclusions.

Trial Examiner Mouritsen: You were asked for the conversation you had, Mr. Witness, and I don't think you have covered any of that yet.

Would you tell us just what you said to these employees and what they said to you?

Mr. Ryan: I want to move to strike what he has testified so far.

Trial Examiner Mouritsen: I will let it remain, but that is the impression I have gained so far. It has been nothing but a smattering of his conversation with those employees.

The Witness: Well, in particular, one noon while we were eating, one of the welders said to me that, "I guess we won't work this afternoon." He says, "We have got to [890] have union helpers", and he says, "It will take them a day or two to get them down from Los Angeles", and that is the only particular conversation that I recall with them.

Q. (By Mr. Yeager): Then did you have any conversations with any of the carpenters that were working for Reed Manchester?

A. Well, yes, I did.

(Testimony of Thomas Franklin Herring.)

Q. Did you have any conversations with them concerning labor matters? A. Yes.

Q. And when did those conversations take place?

A. They were along——

Mr. Ryan: First, can you identify any of the carpenters?

Trial Examiner Mouritsen: You can't ask him those things all at one time.

The Witness: What was your question?

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: Along, I would say, the first part of September up to the middle, or something like that.

Q. (By Mr. Yeager): And who were those conversations with?

A. Well, there was part of them with the foreman. I can't recall his name right now. I know his name, his first name was Gene, I believe, and he suggested that all [891] the boys there at the plant join the A. F. of L. and he said that if we wanted to go into it that they would, the carpenters and the York men, while they were on there would be a good time to go into the union, because if they laid us off, why, they would lay off with us—that they wouldn't work on the job if there was any union trouble.

Q. (By Mr. Yeager): If who were laid off?

A. If we were laid off.

Q. If who laid you off?

(Testimony of Thomas Franklin Herring.)

A. If the Ice Company laid off on account that we had anything to do with the union, that they would lay off with us and that would stop the whole work and they didn't figure the Ice Company would go for that and that they would let us all work.

Q. And what did you say in reply to that?

A. Well, I didn't like the idea of it myself, so I didn't talk much about it. Some of the boys, I guess——

Trial Examiner Mouritsen: Wait a minute. The only question he asked you was what was said, if anything, to these carpenters or this carpenter foreman, as I understand it.

Mr. Ryan: I move to strike as a voluntary statement that he didn't like it— didn't think very much of the idea.

Trial Examiner Mouritsen: I will grant the motion. [892] Tell us what you said in reply to the carpenter foreman.

The Witness: I really didn't say anything to him—have anything to say to him. I just listened to him talk and he told me the good points about the union and my not knowing much about them I didn't have any talk back to him.

Q. (By Mr. Yeager): Now, about that same time did a representative of the labor union come out to the plant there and talk with you men?

A. Yes, sir.

Q. And can you fix the approximate date on that?

(Testimony of Thomas Franklin Herring.)

A. Well, it was around September the 20th some time.

Q. Do you recall his name? A. Dick Neff.

Q. And who did he talk to?

A. He talked to all employees that was working in the storeroom that particular day.

Q. Were you one of them? A. Yes, sir.

Q. Do you recall the names of the other employees that were there working?

A. Well, Henry Fredenburg, Herman Fruhn, Pete Drinkard. I recall those. I don't recall any more.

Mr. Petersen: May we have Mr. Neff identified. He said "Dick Neff came from the union." May we have him identified? [893]

Q. (By Mr. Yeager): Do you know who he was? A. Well——

Q. Did he introduce himself and say who he was?

A. Well, I knew him myself and he came up and shook hands with me. I wouldn't say that is his first name, but I was under the impression it was Dick Neff.

Trial Examiner Mouritsen: Is that Knapp or Neff?

Mr. Petersen: N-e-f-f.

Q. (By Mr. Yeager): What did he say to the men at that time?

Mr. Petersen: Who was Mr. Neff—who was he

(Testimony of Thomas Franklin Herring.)

representing when he came there? Let us find it out. He said he represented the union. Which union did he represent?

The Witness: A. F. of L. Teamsters Union.

Trial Examiner Mouritsen: Did he say who he was representing or did you know that from past experience?

The Witness: No, he told us who he was representing.

Trial Examiner Mouritsen: All right.

Q. (By Mr. Yeager): What did he say to you?

A. Well, he introduced a fellow that he had with him, but I have forgotten his name. I never knew him. And he told us they were from the A. F. of L. Teamsters Union, and they wanted to have the boys there over at their hall that night and talk over union matters. [894]

Q. Did he say anything else that you recall?

A. No, sir, I don't recall anything else that he said. He talked a few minutes among the different employees.

Q. Now, at the time he was discussing—at the time these discussions took place, were Reed Manchester men and the York men—was there any discussion among the employees there about the effect of this change-over? A. Yes, there was. [895]

Q. (By Mr. Yeager): Yes, what employees was this particular discussion between?

A. Well, they all talked of it at different times.

Q. Who do you mean by "all"?

(Testimony of Thomas Franklin Herring.)

A. I mean it was just general talk and gossip around the plant when they changed over they wouldn't need all the men they were working at that time on the Diesel set-up.

Q. You mean all of the employees that were working for the Holtville Ice and Cold Storage Company at that time? A. Yes, sir.

Q. Was there any discussion as to the advisability of going into the union?

A. Yes, there were.

Q. Who was that discussion with?

A. Well, I recall it was with Fredenburg and Standifer mostly.

Q. At what time—when did that take place?

A. Well, for the last month before—well, I will say while they were working on the short jobs around there.

Q. Was it while the Reed Manchester people were working there? A. Yes, sir.

Q. And what was that conversation? What did these men say and what did you say? [896]

The Witness: Well, this talk was going on all through September, as I recall it. They were on a shut-down then and they were all wondering whether they would be the ones to go back to work or would they be the ones that would be laid off.

Q. (By Mr. Yeager): My last question was whether they discussed the effect of joining the union as to whether they would be laid off or not.

A. Yes, they did.

(Testimony of Thomas Franklin Herring.)

Q. What was said?

Trial Examiner Mouritsen: Who did this?

The Witness: Well, Fredenburg. He contacted me about the union and that was, I believe, the day that we met in the hall that night, and I believe they said that [897] was the 26th of September.

Trial Examiner Mouritsen: You mean the day before you met there that night?

The Witness: Yes.

Trial Examiner Mouritsen: Fredenburg talked to you?

The Witness: That morning Fredenburg handed me a little piece of paper and he told me then there would be a union man over that day, he thought, to talk about the union to us, and that it was already talked among—well, Fredenburg and two or three of them there that there would be a meeting that night. I didn't know that at the time, but he told me there would be a meeting that night and they had some kind of a paper they wanted us to sign before that meeting.

Trial Examiner Mouritsen: Did you sign the paper?

The Witness: No, I did not.

Q. (By Mr. Yeager): Was anything else said?

A. No.

Q. Did you attend that meeting? A. Yes.

Q. On the 26th of September? A. Yes.

Q. 1941? A. Yes, sir.

Q. Did you sign an application? [898]

A. Yes, sir.

(Testimony of Thomas Franklin Herring.)

Mr. Smith: Let me interrupt you. You mean by that an application to the Teamsters Union of the American Federation of Labor?

The Witness: Well, I presume that is what it was. I didn't pay any money but I did sign a little paper at their hall that night.

Q. (By Mr. Yeager): Now, Mr. Herring, prior to this meeting at the union hall had there been any discussion among the employees of the Holtville Ice and Cold Storage Company concerning—

Mr. Ryan: I am going to object to this before he gets through, because it is a leading question and I know he is going to suggest the subject matter in the question.

Trial Examiner Mouritsen: We don't want to go into all of the conversations, but I will permit this answer.

Q. (By Mr. Yeager): Had there been any discussion among the men concerning the formation of an employees union? A. Yes.

Q. And when had that taken place?

A. Oh, it was in the spring of 1941, along in February or March in there.

Q. And what employees there at the Holtville Ice Company discussed that matter?

A. Well, there was Fredenburg and Pete Drinkard, Jack [899] Johnson and myself.

Q. And did you have any specific conversations concerning the matter, as you recall?

A. Yes; I was hauling ice from the Pure Ice Company in El Centro and there was talk of all of

(Testimony of Thomas Franklin Herring.)

the ice companies forming a union of their own for the employees, and I would say along in February it was that they invited me over to a meeting one night here at El Centro for that purpose.

Q. You are speaking of the Pure Ice Company here in El Centro? A. Yes.

Q. You say they invited you. Who do you mean?

A. Oscar Gilliland, I believe is the fellow's name.

Trial Examiner Mouritsen: Can you spell that?

The Witness: No, I can't.

Trial Examiner Mouritsen: Gilliland?

The Witness: Yes.

Q. (By Mr. Yeager): And who was he?

A. He was the engineer there at the time.

Q. At the Pure Ice Company?

A. No; he is working for the Imperial Ice Company, I believe, but he was over there this day and he contacted me at the Pure Ice Company.

Q. And did you contact any of the employees concerning this meeting? [900] A. Yes, sir.

Q. Who?

A. Pete Drinkard, Fredenburg and Jack Johnson.

Q. And what was this man's name?

A. Gilliland.

Q. Did Mr. Gilliland tell you the purpose of this meeting that was being called?

A. Yes, sir. He told me it was for forming a union of the Ice Company employees.

Q. And did you attend this meeting?

A. Well, I meant to, but it didn't turn out so.

(Testimony of Thomas Franklin Herring.)

Q. Well, just tell us—what transpired in regard to that meeting?

A. Well, he told me where to go, the address where to go, Eighth and Main, and the four of us got together that night and went there to the address.

Q. What four of you?

A. Pete Drinkard and Fredenburg and Jack Johnson and myself.

Q. All right, go ahead.

A. When we got to the address, why, we went upstairs and it was the A. F. of L. Hall so we see we had been steered wrong, so first we went right back downstairs and didn't even go inside, and I think it was Jack Johnson then said, "Let us go back up and see what he has to say," so we did, [901] and their manager was there and one lady was all that was present.

Mr. Petersen: Which manager?

The Witness: I don't know his name.

Trial Examiner Mouritsen: You mean the manager of the union?

The Witness: A. F. of L., yes. And he talked to us just—oh, I would say ten minutes. He wanted to know if we were from the Ice Company and we told him we were, and he asked which ice company and we told him and he asked us if we were in favor of joining the union, and we told him we weren't and he wanted to know why we weren't, and we told him that we just didn't like the idea and that is all I can recall. We didn't tell him what our purpose was.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): And when you came to this meeting in El Centro did you understand—what was your understanding as to the purpose of the meeting?

A. Well, it was to form——

Trial Examiner Mouritsen: I don't think that is proper.

Mr. Ryan: Object to that.

Trial Examiner Mouritsen: He has given us what Gilliland said to him.

Q. (By Mr. Yeager) Was anything more done concerning the formation of an employees union between that—— [902]

Trial Examiner Mouritsen: At that time?

Q. (By Mr. Yeager): Between that time and the time you attended the A. F. of L. union or went to the A. F. of L. Union Hall?

A. No, there weren't.

Q. Was the matter discussed among the men during that time? A. No, not that I recall.

Q. Well, when was the next time the question of organizing an employees union there at the plant was brought up?

A. Well, it was after we had signed with the A. F. of L.

Q. How soon after, Mr. Herring?

A. The next day.

Q. And who was that discussion with?

A. Well, it was with George Harlan and myself.

Q. And yourself? A. Yes.

Q. And had George Harlan attended that meeting? A. No, he had not.

(Testimony of Thomas Franklin Herring.)

Q. And was anybody else present? A. No.

Q. What was the discussion at that time? What did you say and what did Mr. Harlan say?

Trial Examiner Mouritsen: Where did this discussion take place? A. At my house. [903]

Trial Examiner Mouritsen: You say it was the next day after?

The Witness: Yes.

Trial Examiner Mouritsen: That would be September 27th, 1941?

The Witness: That is right. George Harlan came up to my house this night and we had a little talk about the union and he asked me was I over the night before, and I told him I was, and that I had signed their card, but that that was as far as I was going with it, and he told me that Herman Pool had brought a card for him to sign and he had signed it and he says, "What do you think about the thing?" I said, "Well, I am not going any farther with mine", so he says, "I don't believe I will either." He says, "Do you think Herman will give me my card back?" And I told him I would ask him for it if I was in his place. So, he told me that later on, the next day I believe it was, that he did ask Herman for his card and Herman gave it to him.

Trial Examiner Mouritsen: Let us stay with the first conversation until we have completed that.

The Witness: That is all we had to say.

Q. (By Mr. Yeager): That was all the conversation you had on the 27th? A. Yes. [904]

(Testimony of Thomas Franklin Herring.)

Q. Did you have any other conversation concerning an employees union?

A. Yes. I saw George the next day, I believe it was, at the plant and I asked him if he got his card back from Shorty and he told me that he had. So then I asked George what he thought about us forming an association of the members and he said, "Well," he says, "probably it would be a good thing", and he asked me if I thought we could and I told him I didn't see why we couldn't, because there was lots of the members that wasn't at this meeting on the two nights before.

Q. Anything else said?

A. George told me if he thought we could and I wanted to he would help me.

Q. Did you go ahead then and assist in the organization of the Association?

A. Yes, sir, I did.

Q. The Employees Association? A. Yes.

Q. What did you do in that respect?

A. Well, I had a talk—I talked to a boy on the Kramer Bakery truck, Leo is his name—I don't know whether that is his first name or last name, but that is the name I knew him by. He is a delivery man at Holtville or was at that time, and I asked him how their— [905]

Trial Examiner Mouritsen: Can you fix the time—about when did you do this?

The Witness: Well, I believe it was on the 27th of September.

(Testimony of Thomas Franklin Herring.)

Trial Examiner Mouritsen: Before you had the second talk with Harlan or after?

The Witness: Yes, it was before.

Q. (By Mr. Yeager): Go ahead, tell what discussion you had.

A. I asked him how their union was going with the bakery and he told me it was going along all right; that they had a little trouble, I believe—their management wanted them to sign up with the A. F. of L., but they didn't see fit, so he said that they were then getting along all right.

Q. And then the next day you talked to Harlan?

A. Yes.

Q. All right, what did you do after your talk with Harlan?

A. Well, I believe it was—I talked with Harlan in the morning and in the afternoon I called Mr. Osborne.

Q. Were you acquainted with Mr. Osborne at that time?

A. Well, yes, I knew of him—not personally acquainted, but I knew the gentleman when I saw him.

Q. How did you happen to telephone him?

A. Well, Kramer's Bakery man told me that he could give me the dope that I needed—that Mr. Osborne would tell me how to get it started and what I could do and what we [906] couldn't do, and that he would help us with it.

Q. And so when was it that you telephoned Mr. Osborne—what day was it?

(Testimony of Thomas Franklin Herring.)

A. Well, I believe it was on the 27th or the 28th.

Q. And where did you telephone him?

A. At the Associated Farmers at El Centro.

Q. And what did you say over the telephone and what did he say to you?

A. Well, I told Mr. Osborne who I was and told him what we wanted—that we wanted to start an independent union, and he asked me what help he could be, and I told him that we didn't know how to go about it, and so he told me then that he would come over and see me.

Q. And did he come over to see you?

A. He took my address and came to see me at my house one night. That was along about the 29th of September, I believe.

Q. And who was present at your house when he arrived there?

A. Well, my wife was there when Mr. Osborne didn't come in. We was out in the yard talking.

Q. And did he have anybody with him?

A. No.

Q. What conversation did you have with him on that evening? What did he say and what did you say?

A. Well, I told him that we had labor trouble there and [907] that part of them was wanting to join the A. F. of L., and part of the boys wasn't, and that I thought we could get a union of our own started, among the employees, and I figured it would be better because we would be the only ones interested in it, and he asked me what I wanted him to do,

(Testimony of Thomas Franklin Herring.)

and I told him that we didn't know how to get started, and I understood that he could help us get started.

Q. What did he say?

A. Well, he asked me the employees names that were interested in it and I told him.

Mr. Ryan: Interested in what?

The Witness: Interested in starting an independent union. And I told him. Then I had only talked with one and that was George Harlan, but several of the boys hadn't been to this meeting on the 26th, and as I recall it he asked me some of the employees names and I gave him some of them.

Q. Do you recall the names that you gave him?

A. Well, I gave him George Harlan, Shorty Pool——

Trial Examiner Mouritsen: Is that Herman?

The Witness: Yes, Herman Pool, and Bailey Pool, and Bill Morgan and Roy Davis.

Of those I don't know which ones Mr. Osborne saw, but he left my house that evening late and I didn't see him any more for a couple of days, I believe. [908]

Q. (By Mr. Yeager): Did he make any arrangements or did you make any arrangements with him for a subsequent meeting that night?

A. No. He told me to get around among the boys and see how many of them was interested in the private union, and he did say he would see me later but he didn't say when.

(Testimony of Thomas Franklin Herring.)

Q. And then what else did you do toward organizing the Employees Association?

A. Well, from the 26th—starting on the 27th on the job I was talking to the boys about it and some of them thought it was all right. They had joined the other, but they thought they would stay that way, being as they went that far.

Henry Fredenburg and Pete Drinkard admitted that they would probably just as soon pay one as the other, but they had started with the A. F. of L. and signed up with them, so they suggested they would stay that way.

I told Mr. Davis about it and Mr. Davis told me that it didn't make any difference to him, that he would go with the majority.

Mr. Petersen: What date was that you talked to Davis?

The Witness: I can't recall just what date, but I believe it was the 28th or 27th, along in there. It was early after this union meeting.

Q. (By Mr. Yeager): You discussed the matter *than* with [909] the various men on the job?

A. I did.

Q. Then did you call any meeting—arrange any meeting for the fellows to get together?

A. Well, not for about, oh, I believe a week—it was probably around the 1st of October or shortly after.

Trial Examiner Mouritsen: A week after the 26th?

(Testimony of Thomas Franklin Herring.)

The Witness: Yes, after the 26th. It was approximately a week after that we had our first meeting.

Q. (By Mr. Yeager): And did you arrange that meeting? A. Yes, sir.

Mr. Ryan: Object to leading the witness like that.

Trial Examiner Mouritsen: Overrule the objection.

Q. (By Mr. Yeager): Where was that meeting held?

A. At George Harlan's home.

Q. And who was notified to come, if anybody?

A. Well, Bill Morgan, Simon Hogue, Jack Johnson.

Trial Examiner Mouritsen: How did you know this? Did you notify them?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Those were employees whom you notified?

The Witness: Yes, sir; Pete Drinkard, Henry Fredenburg and Mert Stout. I believe that is about all I can recall that was at the first meeting. [910]

Q. (By Mr. Yeager): Were there any other notified? A. Mr. Osborne was.

Q. What? A. Mr. Osborne was.

Q. Who notified Mr. Osborne? A. I did.

(Testimony of Thomas Franklin Herring.)

Q. Were there any other employees notified?

A. Well, as I recall it there was about eight of us there, but those are the only names that I can remember notifying.

Q. When did this meeting take place?

A. Well, it was around about the 1st of October or shortly afterward.

Q. And will you tell what happened at that meeting as best you can recall?

A. Well, I introduced Mr. Osborne to some of the boys that wasn't acquainted with him, and I told them that he would help us to get our union started if we were in favor of one; that he would be able to tell us what we could do as far as setting up a union of our own was concerned.

Mr. Osborne talked, oh, I would say we were there about an hour, and Mr. Osborne talked to different ones there and he left and told us if we wanted to go further with it, why, to get a little better organized among the employees and see what we really wanted to do, and that if we needed him again, call him and let him know. [911]

Q. And did you hear what Mr. Osborne discussed at that meeting? Were you present while he was talking? A. Yes.

Q. And what did he discuss with the men?

A. Well, he told us that there was at least one of those independent unions in operation and they seemed to be going along all right, having no trouble, and that he thought we could have one there.

(Testimony of Thomas Franklin Herring.)

Q. Did he tell you anything about the mechanics of forming it at that meeting?

A. No, I don't recall that he did.

Q. Was there any definite action taken at that meeting—any vote or anything? A. No.

Q. What happened after that, Mr. Herring, in regard to organizing the Employees Association?

A. Well, on our job, when we would meet, why, we would talk about it and talk to different ones of the employees that wasn't there on that night, and the best I recall we decided we would go through with it and try to start our own union.

Q. And did you have any further meetings?

A. Yes, sir.

Q. And where was the next meeting?

A. They had a meeting at Mr. Stout's — Mert Stout's, [912] but I don't recall when that was. I wasn't present at the meeting. I don't know whether that was the next one or the next one was at George Harlan's. Most of them was at George Harlan's place.

Q. Do you recall any other meetings that you attended at George Harlan's place?

A. Yes. The next one that I attended, why, he told me that they had elected the officers while I was gone; that they had a meeting and elected the officers and that I was vice-president.

Q. When was this meeting at George Harlan's, the one that you did attend?

A. The second one that I attended?

Q. Yes?

(Testimony of Thomas Franklin Herring.)

A. Well, I will take that back. The second I attended at George Harlan's, why, Mr. Osborne was there and he showed them how to draw up their minutes and get started on their book work and then he left. He was only there about 20 minutes, I would say, that night.

Q. Do you recall——

A. That was the second.

Q. Do you recall when it was that that took place?

A. I think that was around, probably, the 15th of October, or something like that.

Q. Was that before or after this meeting when the officers [913] were elected? A. Before.

Q. At this meeting at George Harlan's, was there any official action taken—any election or vote of any sort? A. No, not at this second meeting.

Q. Do you recall who attended that meeting?

A. (No answer.)

Trial Examiner Mouritsen: We will take a short recess at this time.

(Short recess.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Yeager): Do you recall who attended that meeting? The meeting you went to at George Harlan's house, the second meeting you had at George Harlan's house?

A. Well, Mr. Osborne was there and he showed us how to start our minutes off and our books.

(Testimony of Thomas Franklin Herring.)

Q. Do you recall who of the employees were there or if you don't recall say so?

A. George Harlan and myself was there. We are the only ones which I can remember that was there, but there was about eight of us, I believe.

Q. Did Mr. Osborne have anything else to say except in regard to how to form your minutes?

A. No. [914]

Q. Did he stay the whole meeting?

A. No, he didn't. He stayed, oh, around 20 or 30 minutes.

Q. What else did you do at that meeting besides work out your minutes?

A. That is all, I believe. We stayed around there and talked a little while and then went home.

Q. Did you have any subsequent meetings?

A. No, not that I know of. I was away a lot of the time at that time. My wife was in Los Angeles sick and I was up there a lot and they had several meetings that I knew nothing about.

Q. Were you present at any of these negotiations with Mr. Willard that have been testified to?

A. Yes, sir.

Q. And what was the first one that you were present at?

A. I believe the first one that we had with him—I don't recall the date, but it was in the early part of October.

Mr. Petersen: Which part?

The Witness: Early part of October—before the 15th of October, I would say.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): And who else was with you at that meeting?

A. I was trying to remember when the meeting was. It was George and Mert and myself—Mert Stout and George Harlan, but I don't recall just the date of that meeting. [915]

We had several meetings with Mr. Willard before anything was definite.

Q. And at that time, the time you had that first meeting that you recall with Mr. Willard, had you elected your officers? A. Yes, sir.

Q. At any of these meetings that the Employees Association had, was a bargaining committee elected?

Trial Examiner Mouritsen: At which you were present.

The Witness: I don't believe I was present when they elected the bargaining committee. They did have one, but I don't know what meeting it was elected at.

Q. (By Mr. Yeager): Were you notified whether you were on that bargaining committee?

A. Well, there was something said about they had elected a bargaining committee of two and that the officers was to act with them.

Q. Were you elected an officer? A. Yes.

Q. And what office? A. Vice-president.

Q. And were these other men that attended this first meeting with Mr. Willard officers of the Association? A. Yes, sir.

(Testimony of Thomas Franklin Herring.)

Q. What offices did each of those men hold?
[916]

A. President and secretary, I believe.

Q. Who was president?

A. George Harlan.

Q. And who was secretary?

A. Mert Stout.

Q. And what transpired at this first meeting with Mr. Willard? First, was anybody else with Mr. Willard when you met with him? A. Yes, sir.

Q. Who? A. Mr. Osborne.

Q. And where did that meeting take place?

A. In Mr. Willard's office.

Q. What conversation did you have with Mr. Willard at that time?

A. Well, Mr. Osborne told Mr. Willard that the employees had decided to form an association of their own and that this was the bargaining committee, and we wanted to bargain with him on the wages.

Q. And then did you take part in the conversation? A. Well, I don't recall that I did.

Q. Who did the talking for your group?

A. Well, there wasn't much talking did and what talking there was, I think, George Harlan did it.

Q. Was anything accomplished at that meeting in the way of [917] an agreement?

A. No, there wasn't.

Mr. Petersen: I object to that as being a conclusion of the witness. Let the witness tell what

(Testimony of Thomas Franklin Herring.)
happened and who said what and let it go in like that instead of his conclusion.

Trial Examiner Mouritsen: I think it would be better to find out what did occur.

Q. (By Mr. Yeager): Can you tell us what did occur—what was said between the various parties?

A. Well, the best I recall it, Mr. Willard wanted to know what we wanted and what working conditions we wanted, and we didn't — the best I recall it we didn't have much drawn up and he suggested that we adjourn until we drew up what we wanted and have another meeting with him, and then we could work out something, and if we didn't have it in writing why, we couldn't.

Trial Examiner Mouritsen: Did anything else occur that you recall at that meeting?

The Witness: I don't believe so.

Q. (By Mr. Yeager): Then did you have any papers drawn up? A. Yes, we did.

Q. And did you see to having those drawn up?

A. Yes. George Harlan and myself, I believe it was.

Q. And who did you have draw them up? [918]

A. Mr. Whitelaw.

Q. And did you have in mind or did you write out any papers?

Mr. Ryan: Wait a minute, let us not lead this witness too much.

Mr. Yeager: All right, strike that out.

Q. (By Mr. Yeager): Did you meet with Mr. Whitelaw? A. In his office here in El Centro.

(Testimony of Thomas Franklin Herring.)

Q. And how long after this meeting with Mr. Willard was it that you went up there?

A. Well, I believe it was the next day, possibly a day or two afterwards.

Mr. Petersen: May we still get some date fixed? The witness hasn't fixed any date.

Trial Examiner Mouritsen: Can you fix the date when this took place?

The Witness: Well, I said back there somewhere, I believe, we had the first meeting about the 15th of October with Mr. Willard and this is still what we are talking about, isn't it, the first meeting?

Trial Examiner Mouritsen: I think the question now is when you saw Mr. Whitelaw.

Mr. Smith: He said the next day or two after the meeting.

Trial Examiner Mouritsen: The day after the meeting? [919]

The Witness: Yes.

Q. (By Mr. Yeager): And that took place in his office? A. Yes, sir.

Q. Was there anybody else along besides Mr. Harlan and Mr. Stout and yourself?

A. I don't believe Mr. Stout was there.

Q. Just you and Mr. Harlan? A. Yes, sir.

Q. What took place at that meeting with Mr. Whitelaw? What did you men say and what did Mr. Whitelaw say?

A. We told Mr. Whitelaw our business up there and told him who we were.

(Testimony of Thomas Franklin Herring.)

Mr. Ryan: What did you tell him?

Q. (By Mr. Yeager): Just tell what you told him.

A. I believe George introduced himself and then introduced me and we told him what we wanted.

Trial Examiner Mouritsen: Tell us what you said. Tell us as nearly as you can recall what you said and what Mr. Whitelaw said. When you say "We told him what we wanted", that doesn't mean anything to me. Tell us what you did and what you said.

The Witness: We told Mr. Whitelaw we were going to start an association of the Holtville Ice Company employees, and we wanted him to draw up the papers for us. He asked us if we knew what we wanted in those papers, and we told [920] him we didn't have very much of an idea of it; that we figured that he could help us more than we could help ourselves because he was acquainted with labor problems.

He told us then that he had a copy of the Kramer's employees contract in his office and looked it up and he gave it to us and told us we could show it to our employees and let them see what they were working under, and if that suited us he would draw us up the same kind of a contract, only to fit our employees of the Ice Company.

We took it back to the employees and that is all we did in the office that day.

Trial Examiner Mouritsen: What did he give

(Testimony of Thomas Franklin Herring.)

you? You say he gave you a copy of Kramer's what?

The Witness: By-laws, and I don't know whether it was their contract or not with the company, but it was a copy of their by-laws that they were working under in their union.

Q. (By Mr. Yeager): Mr. Herring, was this conversation that you have referred to with Mr. Whitelaw, one that you had after having met with Mr. Willard?

A. No, I believe that was before we met with Mr. Willard.

Q. You met with Mr. Whitelaw more than once, didn't you? A. Twice.

Q. This conversation you are referring to——

A. Maybe three times.

Q. This conversation that you are referring to now took [921] place before your meeting with Mr. Willard, is that right?

Mr. Petersen: I am going to object to that as being very leading and suggestive.

Trial Examiner Mouritsen: Objection overruled.

The Witness: Well, it seems like we had a meeting with Mr. Whitelaw before that, but I don't recall of doing anything about it, but at this particular meeting was, I know, was the next day after we met with Mr. Willard.

When we met with Mr. Willard we didn't have any papers to work under and that was our purpose in going to see Mr. Whitelaw.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): When was it you met Mr. Whitelaw again?

A. Well, it was several days but I couldn't place a date on it.

Q. Several days after this first meeting?

A. Yes, sir.

Q. And who went up there that time?

A. Well, I don't believe I was in that meeting they had with him the second time. I believe just George Harlan came over after some papers and to tell him what we wanted, and I wasn't there.

Q. At this meeting you had with Mr. Whitelaw were any papers furnished to you that would act for a basis for an agreement with Mr. Whitelaw? [922]

A. No, they got those later. [923]

Q. (By Mr. Yeager): Mr. Herring, you have been present here when there was testimony concerning the clause in the agreement with Mr. Willard, in regard to withholding the dues out of the salary for each payroll period? A. Yes.

Q. You have heard that testimony? [926]

A. Yes, sir.

Q. Are you acquainted with the discussion that was had concerning that clause?

A. Yes, sir, I am.

Q. Whose idea was it to have that?

Mr. Petersen: To which we object.

Q. (By Mr. Yeager): The clause in the agreement.

Trial Examiner Mouritsen: I will sustain the objection.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): Who proposed it?

A. That they hold out the checks?

Q. Yes. A. The Employees Association.

Q. And was that clause discussed with Mr. Willard? A. It was.

Q. At a meeting that you attended?

A. Yes, sir.

Q. And what meeting was it?

A. I don't recall, but this particular meeting, why, we wanted——

Trial Examiner Mouritsen: Just a minute. Let us find out as nearly as we can the date of the meeting.

The Witness: Well, we had meetings for a couple of months or six weeks or so, and those meetings must—it was one of the last meetings that we had with him. I can't recall the date. [927]

Trial Examiner Mouritsen: You were present only in Mr. Whitelaw's office on the one occasion?

The Witness: That is right.

Trial Examiner Mouritsen: And on that occasion no mention was made of any contract or proposal to be presented to Mr. Whitelaw?

The Witness: No.

Q. (By Mr. Yeager): What discussion did you have with Mr. Willard concerning that clause?

Trial Examiner Mouritsen: Let us find out the date. You say there were how many meetings?

The Witness: Between five and seven meetings.

Trial Examiner Mouritsen: You say there were between five and seven meetings, is that right?

(Testimony of Thomas Franklin Herring.)

The Witness: That is right.

Trial Examiner Mouritsen: But you can't fix the date when the first one was held nor when the last one was held, is that right?

A. Well, the first one was held about, somewhere near the middle of October, I believe, and the last one was along in November.

Trial Examiner Mouritsen: Which part of November?

The Witness: Well, I would say it was getting along toward the last of November before we had a final agreement with Mr. Willard and the contract was signed. [928]

Trial Examiner Mouritsen: Did you attend all five or seven of these meetings?

The Witness: No, I only attended about three of them. I attended the first one and then along, at the last, I believe it was before I came in on any more of them.

Trial Examiner Mouritsen: Was this proposal discussed at the first meeting?

The Witness: No, it was not. It must have been around the 1st of November—somewhere near that time, this meeting that this was discussed.

Trial Examiner Mouritsen: Were you present at that time?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Well, did I understand you correctly to say you were present at the first one and then near the last of the meetings which were held in the latter part of November?

(Testimony of Thomas Franklin Herring.)

The Witness: Something like that, yes.

Trial Examiner Mouritsen: But you think the meeting where this was discussed and you were present at that meeting, was held around the 1st of November, is that right?

The Witness: I believe so. I was at the meeting.

Q. (By Mr. Yeager): What was the discussion—what did Mr. Willard say concerning that clause?

A. Well, we wanted it put in the contract for the company [929] to hold out the dues each month and that would save a lot of trouble for the boys, because they—I mean the ones that would have to take care of collecting the dues, Mr. Stout, and he figured it would take a lot of his time to go and see each one, and they were working different shifts, and so he thought it would simplify matters if the company would get a signed agreement from the employees to hold out this from their checks on the 1st or the 15th of the month, as the paydays come due, what they owed, and at first Mr. Willard did not want to do that. I don't know for what reason but he didn't, and he finally did consent to doing it.

Q. Now, are you acquainted with the clause in that agreement that requires an employee to become a member of the Association within 15 days after he is hired?

A. Well, I know it is in there, yes, sir.

Q. Do you know who proposed that clause?

A. Well, the Association at a meeting.

Q. And were you present at that meeting?

A. I don't recall that I was.

(Testimony of Thomas Franklin Herring.)

Q. How do you know the Association proposed it?

A. Well, I was under the impression that they did.

Mr. Ryan: I object to that and move that the answer be stricken.

Mr. Petersen: Both answers.

Trial Examiner Mouritsen: I will deny the motion. [930] I think it is pretty clear. You can go into that with somebody else.

Q. (By Mr. Yeager): Was that part of the agreement discussed with Mr. Willard?

Trial Examiner Mouritsen: At any meeting where you were present?

The Witness: No, I don't believe so. It was in our final agreement but I don't know what meeting it was discussed at.

Q. (By Mr. Yeager): You don't recall Mr. Willard discussing it at any meeting you attended?

A. No, I don't.

Q. Were there any more meetings with the A. F. of L. Teamsters Union held that you attended?

A. No.

Q. And did you ever see any representatives of the A. F. of L. Teamsters Union out at the Holtville Ice and Cold Storage Company subsequent to this time that Mr. Neff was out there?

A. No, I didn't.

Mr. Yeager: I believe that is all.

Mr. Ryan: Will you mark this for identification?

(Testimony of Thomas Franklin Herring.)

(The document referred to was marked as Board's Exhibit No. 19, for identification.)

Mr. Smith: I have one question, Mr. Herring, that [931] I would like to ask.

Cross Examination

Q. (By Mr. Smith): This man Gilliland spoke to you about bringing the Ice Company employees into a union, is that right? A. Yes.

Q. Did he say whether he proposed an independent union or whether it was to be affiliated with the A. F. of L.?

A. No, it was to be an independent union.

Mr. Petersen: On that same subject, may I ask a question so we won't have to go over it again.

Q. (By Mr. Petersen): Mr. Gilliland gave you the address of 795 Main Street to attend the meeting? A. Did he?

Q. Yes.

A. I don't recall what address but we looked the address up that night, the four of us, and that is where we found it and that was the A. F. of L. Hall.

Q. Who told you to go up there to Eighth and Main Streets? Did Mr. Gilliland tell you that was where the meeting would be held?

A. Yes, sir, he did.

Mr. Petersen: That is all. [932]

Q. You did not know Mr. Whitelaw until you

(Testimony of Thomas Franklin Herring.)

got up into [934] his office and George Harlan introduced himself and introduced you?

A. No, I didn't.

Q. Now, isn't it a fact that George or, that Mr. Hugh Osborne, when he had talked to you in the early part of September or early part of October, had advised you that if you needed any help you might get it from Mr. R. B. Whitelaw?

A. Yes, sir.

Q. And it was pursuant to that that you and Mr. George Harlan went up to R. B. Whitelaw's office?

A. Yes, sir.

Q. Mr. Herring, what was the nature of your business for going up there on that particular occasion to Mr. R. B. Whitelaw's office?

A. We wanted papers drawn up for us to start our association.

Q. And when you got up to the office of Mr. Whitelaw, will you tell us just what was said and done at that time?

A. We told Mr. Whitelaw that we were trying to start an association of our employees at the Holtville Ice Company, and that we didn't know what we was trying to do or how to go about what we were trying to accomplish, and that we had been informed that he was the man that could tell us what we could do and that he would draw up some papers for us; that we understood—— [935]

Q. Did you tell him that Hugh T. Osborne—— Mr. Yeager: Let him finish his answer.

Trial Examiner Mouritsen: Let him finish.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Ryan): Go ahead.

A. We told him we understood he had drawn up the Kramer Bakery agreement with their men and we wanted something similar to that.

Q. Did you explain to him that you had gotten this information from Hugh T. Osborne?

A. Yes, we did.

Q. And then what did Mr. Whitelaw say to you?

A. Well, he told us that he had a copy—I believe it was the by-laws, of the Kramer Bakery, that they were using, and to start with, why, he showed us those and told us if we wanted to we could have them and take them back to our members and see what they thought of those by-laws, and if there was any changes to be made in them, to write the changes we wanted made to fit our agreement, and bring them back and then he would draw them up for us.

Q. And did you then take these by-laws of the Kramer Baking Association to Mr. Whitelaw, take them back to the *back to the* employees of the company, and discuss them? A. Yes, sir.

Q. And were any changes made in them in your discussions among the other employees? [936]

A. Well, they were to fit our working agreement but I don't recall what—they weren't the same as the Kramer's, however.

Q. You changed them somewhat?

A. Yes, sir.

Q. Then did you agree to the changes among yourselves? A. Yes.

(Testimony of Thomas Franklin Herring.)

Q. What did you do then with them? Take them back to Mr. Whitelaw?

A. I believe Mr. George Harlan was the man that took them back.

Q. You designated Mr. Harlan to take them back? A. Yes, sir.

Q. And you were not present at that time, as I understand it? A. Yes, sir.

Q. Now, when your Employees Association first went into a meeting with Mr. Willard, I understood you to say you were present at that time?

A. I was what?

Q. You were present at the first meeting?

A. Yes.

Q. At that time did the Employees Association have any proposals in writing to give Mr. Willard about bargaining?

A. I don't recall whether we did or didn't. We drew up so many and changed them for different items that I don't [937] recall the first meeting, whether we had anything drawn up or whether we didn't.

As I recall it there was three of us present at the first meeting besides Mr. Osborne.

Q. Did you testify that after talking to Mr. Harlan or Mr. Willard on this first meeting, the first meeting that you went in to see him when Mr. Osborne—Mr. Osborne was also present, was he?

A. The first meeting he was.

Q. And Mr. Harlan was present also with you and Mr. Drinkard, is that right?

(Testimony of Thomas Franklin Herring.)

A. Mr. Stout, I believe.

Q. I believe you testified that after discussing wages or various working conditions, Mr. Willard made the suggestion to take it back and put it down in writing, is that right? A. That is right.

Q. Then is it a fact that the Employees Association went back to Mr. Whitelaw and got him to draw or draft up some proposals in writing?

A. Yes, sir.

Q. Now, do you know—were you present at that time in Mr. Whitelaw's office?

A. I don't believe that I was.

Q. Before going up to Mr. Whitelaw's office did you have [938] a meeting as to what to do there?

A. Yes, sir.

Q. Where did that meeting take place?

A. George Harlan's home.

Q. About how long after this first meeting in Mr. Willard's office that you told us about?

A. Oh, I would say a couple of days.

Q. Did you take up at this meeting at Harlan's home the question of drafting some written proposals? A. Yes, sir.

Q. What did you decide to do in that regard?

A. Well, we drew up approximately what we wanted and the working conditions that we wanted.

Just for a beginner we wanted something to work on and figured we would work to it, which we did.

Q. Had you ever had any experience before in drafting such proposals? A. No.

(Testimony of Thomas Franklin Herring.)

Q. How were they drafted, in pencil, or how?

(No answer.)

Trial Examiner Mouritsen: Who did it—who wrote them up?

The Witness: I would not say for sure who drew those up, but they weren't in writing, they were typed off.

Q. (By Mr. Ryan): Were they typed at the meeting? [939]

A. No, they weren't.

Q. Do you know who typed them?

A. No, I don't know who typed them.

Q. Then do you know whether or not after you had discussed your proposals at that meeting—you say you typed up some suggestions that you had in that regard. Do you know whether or not they were taken up to Mr. Whitelaw's office for further drafting?

A. I believe that they were.

Q. You were not present at that time, is that right?

A. No, I wasn't.

Trial Examiner Mouritsen: Was it Mr. Harlan who took it up with Mr. Whitelaw?

The Witness: I believe the second time Mr. Harlan went back to Mr. Whitelaw's office and he took the copy he had of Kramer's working agreement and our own with him, and told him what we wanted. There was nothing said in this about wages or anything like that. It was just an agreement with Mr. Willard.

Q. (By Mr. Ryan): Had you gotten a copy of the Kramer Baking contract covering working hours and conditions some time previous to that?

(Testimony of Thomas Franklin Herring.)

A. Well, it wasn't their contract that we had.

Q. Just what was it? I believe you already stated you had the by-laws. [940]

A. I was talking about the—it was about their by-laws and not their contract. That was all we had of Kramer's, was their by-laws.

Q. And then at the time you met at Harlan's home after this first meeting with Willard, you didn't have any other contract to follow?

A. No.

Q. Then did you thereafter at any time get a copy of any other contract?

A. No, we didn't.

Q. Never did?

A. No, Mr. Whitelaw worked that up for us.

Q. He did that for you? A. Yes, sir.

Q. (By Mr. Ryan) Mr. Herring, I show you what is in evidence as Respondent Ice Company's Exhibit 3, and ask you whether or not you ever saw that before (handing exhibit to the witness).

A. Yes, sir.

Q. When did you first see that?

A. I don't recall the date.

Q. Do you know where it was obtained or who prepared it?

A. I was under the impression that Mr. Whitelaw prepared this part of it, at least, and this writing here, I believe possibly, some of that was George Harlan's, and some of it [941] was Mr. Willard's.

Trial Examiner Mouritsen: Who was the last one?

(Testimony of Thomas Franklin Herring.)

The Witness: George Harlan, I believe, wrote in something here that we wanted put in our contract, is the way I recall it, and I believe this is Mr. Willard's here that he wrote in.

Q. (By Mr. Ryan): You are referring now to the white sheet in longhand, is that right?

A. Yes, sir.

Q. Which is the second sheet.

Mr. Smith: You mean the part written in pen?

Mr. Ryan: Yes, pen in longhand.

The Witness: I don't know who prepared this part of it here.

Mr. Smith: You did not see Mr. Willard write that?

The Witness: No, I didn't.

Q. (By Mr. Ryan): And you don't know who or, do you know whose writing it is that appears on the yellow sheet which is a part of Respondent Ice Company Exhibit 3 in ink?

A. No, I don't know whose writing that is.

Trial Examiner Mouritsen: Mr. Herring, did you see this Respondent Ice Company's Exhibit No. 3 at a conference with Mr. Willard first, or where?

The Witness: I believe we had that at a meeting of the Association, I believe, first, before we took it to Mr. Willard. [942]

Q. (By Mr. Ryan): I believe I understood you to say that Mr. Whitelaw typed the typewritten part of it up, is that right? A. Yes, sir.

(Testimony of Thomas Franklin Herring.)

Q. And then after you had gotten this first document in writing or typed up, the Company's Exhibit 3, which you looked at, was there any subsequent document after that that you bargained on—any document after that?

A. Well, I believe there were but I was away along about that time and I don't know anything about that.

Q. Mr. Herring, I believe you stated that you had had a conversation some time in the fall of 1941 or about that time, with someone named Leo, and you couldn't remember his last name, an employee of the Kramer Baking Company. Is that right?

A. That is right.

Q. About when was that conversation?

A. Well, it was along about the time when we met at the union hall over here on September 26th. I believe it was [944] the next day or so.

Q. Where did you happen to meet?

A. Downtown on the streets of Holtville.

Q. Holtville? A. Yes, sir.

Q. Had you known him before?

A. Yes, sir.

Q. And was he a driver and deliverer of ice?

A. No, he was a bakery truck driver.

Q. What was that conversation you had with him on that occasion?

A. Well, I had read in the paper where they had formed an association a few months back and I didn't know whether it was still going or not, so I asked him if it was and he told me that it was still

(Testimony of Thomas Franklin Herring.)

going all right, and that they were well satisfied with it.

Q. What else did he say to you or you say to him?

A. Well, I told him I was in favor of us having one there and he said he didn't see why it wouldn't work for us as well as it did for them. That was all that we had to say.

Q. He suggested, did he not, I believe you said something about him suggesting—that you get in touch with Mr. Osborne? A. Yes.

Q. Did he tell you to get in touch with him—where did [945] he tell you to get in touch with him?

A. He didn't tell me.

Q. Had you heard of Mr. Osborne before that?

A. Yes, I had.

Q. In connection with the Associated Farmers?

A. Yes.

Q. And you knew where the Associated Farmers office was in the court house, did you?

A. No, I didn't.

Q. Where did you call Mr. Osborne when you called him?

A. I just looked him up in the telephone book and called him.

Q. Where did you reach him on that occasion?

A. I believe he was at the Associated Farmers.

Q. In the court house?

A. I put in a call for him and I don't think he was there at first, and the lady said, as well as I

(Testimony of Thomas Franklin Herring.)
remember, told me when he would be back, and I called later and got him.

Q. What was the conversation that you had with him there then when you got in touch with him? Did you have a conversation with him over the telephone first?

A. Oh, not very much. I told him what I wanted and he told me he would come over.

Q. What did you tell him you wanted?

A. I told him we wanted to start an association of our own [946] there at the plant among the members, and I asked him if he could help us and he said he could and that he would come over to see me. He didn't say when, but he said, "I will come over to see you about it."

Q. Did he come over and see you after that?

A. I believe it was that night that he came over.

Q. That was to your home, was it?

A. Yes, sir.

Q. And who was present at your home, if anyone, besides you and Mr. Osborne?

A. No one.

Q. Will you tell us what the conversation was at that time?

A. Well, I went on to tell Mr. Osborne that we wanted to start our union there and then I wondered if he couldn't help me, so he asked me how many of the boys was in favor of it and I told him that I hadn't talked to very many of them, but we had had some words about it three or four months back, and at that time, why, they did talk favorable and I

(Testimony of Thomas Franklin Herring.)
thought some of them still would be, so I gave him some of the employees names and he told me to work on it.

Q. And you told him, didn't you, that the night previous or a night or two previous a number of the men had gone down and signed up with the A. F. of L. Teamsters Union?

A. I believe I did but I wouldn't say for sure that I [947] mentioned that to him.

Q. What did Osborne say?

A. Well, he told me to work on it; that he would see some of these men that I had mentioned and see how they felt about it, and he would see later how the thing got along, and he would see me again, but he didn't say when.

Q. When was it that he suggested you seek advice from Mr. R. B. Whitelaw?

A. I believe it was that night or the next meeting that I had with him, but I wouldn't say for sure.

Q. How long was it after that first meeting that you again had a conversation or had an opportunity to meet with him, after the first time you met him at your home?

A. Well, within a week later or less.

Q. Did he come to see you on that occasion?

A. Yes. [948]

Q. (By Mr. Ryan): Will you tell us, Mr. Herring, how you happened to see Mr. Osborne about a week after that time at your home?

A. I didn't see him at my home the second time.

(Testimony of Thomas Franklin Herring.)

Q. I mean after you had first seen him at your home. A. (No answer.)

Q. I believe you said you saw him about a week later.

A. Well, he saw me one day at the plant.

Q. Go ahead.

A. I was at the plant and he dropped by. I don't know whether he dropped by to see me there or not, but he did mention how I was getting along and I told him I thought all right, that I had saw several of the boys and knew how they felt on it.

I gave him some names then of some of the boys that were in favor of it.

Q. That you thought were in favor of it?

A. Yes.

Mr. Petersen: Let us hear the names.

Q. (By Mr. Ryan): Who were they?

A. George Harlan and Bailey Pool and Simon Hogue and Lloyd Gettle and Bill Morgan.

Q. Is that Bill Morgan the same as W. T. Morgan? A. I think so.

Q. And how soon again was it after that, if at all, you [949] saw Mr. Osborne?

A. Well, it was at our first meeting after that that he was there.

Q. That was the meeting at where—where did that meeting take place?

A. At George Harlan's home.

Q. What was discussed at that meeting—who was at that meeting besides you?

A. Pete Drinkard was there, George Harlan,

(Testimony of Thomas Franklin Herring.)
myself, Simon Hogue, Lloyd Gettle, Jack Johnson.
As I recall they were there. Possibly more.

Q. Was Mr. Osborne there?

A. Yes, he was.

Q. What did he say at that meeting, if anything?

A. Well, he was introduced to the boys that wasn't acquainted with him.

Q. Who introduced him? A. I did.

Q. How did you introduce him and just what did you say to the boys? A. "Mr. Osborne".

Q. Did you tell them who Mr. Osborne was?

A. Well, I don't recall that I did. I told them that he would be able to help us on our association. That is all I remember telling them. I don't think I mentioned [950] him as being with the Associated Farmers.

Q. You don't know that you did?

A. I don't know that I did or didn't, because I don't remember.

Q. After you introduced him to the men present at that meeting, did he proceed to say anything?

A. Yes; he got up and said that he understood that we was wanting him to help us start the Association of Employees. He said he would be glad to help us in any way that he could and he would help us to elect our officers, if we were ready and thought we wanted to, and so he did that, and then he left.

Q. You say he did that. How did he do it?

A. He told us which officers to elect.

Q. What did he say in that regard?

A. I don't understand what you mean.

(Testimony of Thomas Franklin Herring.)

Q. What did he say in that regard? You say he told you which officers to elect. Just what did he say?

A. He told us to get a president and vice-president and secretary.

Q. Did he tell you or explain to you how to nominate them and vote for them? A. Yes.

Q. Anything else done at that meeting that night? A. I don't believe so. [951]

Q. Then when did you see Mr. Osborne again after that?

A. I believe the first meeting we had with Mr. Willard in his office, Osborne was there. There was Mr. Osborne and I believe Mert Stout and George Harlan and myself.

Q. You and Mr. Stout and George Harlan went in to see Mr. Willard, did you, at that time?

A. Yes.

Q. What was your purpose for going in on that occasion?

A. Well, we were just kind of acting as a bargaining committee.

Q. You went in to try to start bargaining?

A. Yes.

Q. Where did that meeting take place?

A. In Mr. Willard's office.

Q. And when you got in there Mr. Willard was there, was he? A. Seemed like he was.

Q. Was he there?

A. No; he was out in the garage and then he came in.

(Testimony of Thomas Franklin Herring.)

Q. When you got in there was Mr. Osborne in the office?

A. I would not say for sure that he was. He appeared on the scene at the meeting but I wouldn't say just when he came in.

Q. Do you know how he happened to be there?

A. No, I don't.

Q. And I believe you stated, or, did you state on direct [952] examination, that he introduced you men to Mr. Willard then as representatives of the Employees Association?

A. Well, I don't remember saying that myself, but I heard it as someone else's statement. I don't believe I stated that.

Q. Do you recall now, thinking about that meeting, that he did do that? A. Yes, sir.

Q. And what did he say in that regard—that is, Mr. Osborne?

A. Told Mr. Willard that we wanted to bargain with him about wages.

Q. Did he mention anything about an Employees Association? A. I believe he did.

Q. What did he say about that, the best you can recall?

A. I don't remember him saying anything about it only that that is the way he introduced us, as the bargaining committee of the Association.

Q. Then what?

Mr. Petersen: May we have a time?

Q. (By Mr. Ryan): About what time was this

(Testimony of Thomas Franklin Herring.)
meeting in the office that you are testifying about,
to the best of your recollection?

A. Well, I really can't place any definite date
for it.

Q. You testified before it was about the middle
of October. [953]

A. Something near that because it was some time
after we went into it, and we went into it shortly
after the 26th of September.

Q. Now, what was discussed and what was said
and what was done by the parties present at that
meeting in Mr. Willard's office?

A. Well, as I recall it Mr. Osborne did not stay
for any length of time after he introduced us. He
left. Mr. Willard asked us what we were there for
and we told him it was to discuss wages and working
conditions, and he asked us if we had anything
drawed up and we told him we didn't have, so he
suggested that we adjourn and work up something
that we wanted and then have another meeting with
him.

Q. Was any suggestion made by anyone as to
when the next meeting would take place?

A. No, there wasn't.

Q. Then what did you do after that, Mr. Her-
ring, with respect to drawing up something in the
way of proposals for Mr. Willard?

A. Well, I believe within the next day or two
after that, why, we went to Mr. Whitelaw's office.

Q. You and George Harlan? A. Yes.

Q. Anyone else?

(Testimony of Thomas Franklin Herring.)

A. No. And we went there to draw up some kind of an [954] agreement and he showed us what Kramer's Bakery had and suggested that we take that to our meeting and see if our boys wanted that or something different.

Q. He gave you a working contract or a contract which the Kramer Bakery employees association had in effect with that company, is that right?

A. That is right.

Trial Examiner Mouritsen: Did he give you that or the by-laws?

Mr. Petersen: By-laws.

Q. (By Mr. Ryan): I was just going to bring that out.

Had you previously been up to Mr. Whitelaw's office on the question of by-laws?

A. I believe we got them both at one time.

Q. Is it your recollection now that when you first met with Mr. Willard and Mr. Osborne was in there and introduced you as the bargaining committee, that you at that time still had not had your by-laws and constitution?

A. No, we didn't the first meeting, I don't believe.

Q. Your recollection is that you got the by-laws from Mr. Whitelaw on that occasion and also a copy of the contract which was in effect between the Kramer Baking Company and its employees association?

A. I believe so.

Q. Then what did you do with that material? [955]

A. We had a meeting of the Association boys.

(Testimony of Thomas Franklin Herring.)

Q. About how long after you had been in Mr. Whitelaw's office did you have that meeting?

A. Oh, just shortly afterwards, the next night or two.

Q. Where did that meeting take place?

A. At George Harlan's.

Q. Was Mr. Osborne present?

A. I don't believe he was at that one.

Q. What business was transacted there?

A. Well, I really don't know. The minutes will show that. I don't know just what happened at that meeting, but I know we talked over what they was working under and there was some changes figured to be made different in it. I don't recall what.

Q. In that contract? A. Yes.

Q. Some changes to be made in the contract that you had gotten from Mr. Whitelaw?

A. That is right, to fit our working conditions there.

Q. Then after you had decided what changes were to be made in that, did you take it back to Mr. Whitelaw?

A. I believe George Harlan took it back.

Q. Did you see it then after Mr. Harlan had taken it back to Mr. Whitelaw? Did you have occasion to see anything that he got from Mr. Whitelaw? [956]

A. I don't believe I did. That happened about the time I was away and I came in on the last of it again, when it was practically all settled. [957]

(Testimony of Thomas Franklin Herring.)

Q. When did you change your mind about joining a union?

A. Before I called Mr. Osborne. [969]

Trial Examiner Mouritsen: When you first went in to talk with Mr. Willard, you and Merton Stout, did he say that he would deal with you, or would negotiate with you?

The Witness: Yes, sir. [989]

Recross Examination

Q. (By Mr. Petersen): When you first met Mr. Willard to negotiate a contract, and Mr. Osborne introduced you as the bargaining committee, what did you show Mr. Willard, if anything, that you were the authorized bargaining committee?

A. Nothing.

GEORGE P. DRINKARD

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Direct Examination [996]

Q. And what did you do, or discuss concerning the agreement at that meeting?

A. Well, we presented him with the agreement

(Testimony of George P. Drinkard.)

that we had. He read it over and disagreed with things that he didn't like and we discussed them.

Q. Then did you meet with Mr. Willard after that? A. Yes.

Q. Now, the next meeting you had with Mr. Willard, was that all of the employees or just this bargaining group?

A. It was usually all the employees who were present at the plant at that time or could be notified about the meeting.

Q. And what happened or, how long after this last meeting of the Association was it that you all met with Mr. Willard?

A. I can't say just how long was—within a few days.

Mr. Petersen: May we have the time fixed a little bit closer?

The Witness: I would say a week.

Mr. Petersen: May I ask one question on voir dire? [1012]

Voir Dire Examination

By Mr. Petersen:

Q. Did you meet with Mr. Willard before or after the plant started in operations on October 29, 1941?

A. To the best of my knowledge it was after the plant started.

Q. That fixes the date a little bit better.

(Testimony of George P. Drinkard.)

Q. (By Mr. Yeager): Did you have, or did you arrive at any final agreement at that meeting?

A. No.

Q. You had subsequent meetings, did you?

A. Yes.

Q. At those subsequent meetings did the bargaining group meet with him or did all of the employees of the Association meet with him?

A. The bargaining group and any member that happened to be present. It was an open meeting.

Q. Did you finally come to an agreement with Mr. Willard? A. We did.

Q. After you had come to an agreement with him did you have a meeting of the Employees Association then? A. Yes.

Q. And do you recall about when it was that you had that meeting? A. No, I don't. [1013]

Trial Examiner Mouritsen: Do you recall when you finally reached an agreement with him?

The Witness: Well, I don't recall when it was, but the minutes show in the Association, when that agreement was made [1014]

MERTON KIRKWOOD STOUT,

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Yeager:

Q. What is your full name?

(Testimony of Merton Kirkwood Stout.)

A. Merton Kirkwood Stout.

Q. Where are you employed?

A. Holtville Ice and Cold Storage Company.

Q. When did you start working there?

A. I believe in May, 1934.

Q. Were you working there during the season of 1941?

A. I was.

Q. What job did you have during that season?

A. Engineer—Diesel engineer, Diesel operator I believe is the way it is listed on the time card.

Q. And were you working for the Holtville Ice and Cold Storage Company in September of that year?

A. I was—the latter part. The first 15 days of September I was away on vacation [1029]

Q. When did you first hear any discussion among the employees of the plant concerning an Employees Association?

A. Well, one time along early in the spring there was talk about it and several times before that there was talk about it, but I don't remember—it seems to me like some of us engineers talked it over before that year even.

Q. The spring you refer to is the spring of 1941?

A. Yes, sir.

Q. And who among the employees discussed the matter?

A. Oh, I would say more or less all of us.

Mr. Ryan: I object to that as a conclusion of the witness.

(Testimony of Merton Kirkwood Stout.)

Q. (By Mr. Yeager): Can you name specifically some of the employees who discussed it?

A. I believe Henry Miller talked it over and I believe Eddie Jones talked it over.

Q. Was this during the spring of 1941?

A. I don't remember whether it was this time or before, but I had talked it over and I think at that time that Pete Drinkard and them were speaking about coming over here. We had some time along in there talked it over, but never made any definite decision about it in any way. We just talked it over, whether we will, in fact, whether we would form an organization. We weren't satisfied with the working conditions there and we were wondering in what way we [1030] could best benefit ourselves, whether if we formed a local union or joined up with some other union, which would be to our best advantage.

We had never made any decision on it in any way.

Q. And then did you attend this meeting at the Labor Temple here in El Centro?

Trial Examiner Mouritsen: Which one?

Q. (By Mr. Yeager): September 26, 1941.

A. Yes.

Q. Did you sign an application? A. I did.

Trial Examiner Mouritsen: For the Teamsters?

The Witness: Yes, I did.

Q. (By Mr. Yeager): And just prior to that meeting was there any discussion among the employees concerning an employees association?

A. Yes.

(Testimony of Merton Kirkwood Stout.)

Q. Who, among the members—who, among the employees discussed it as you recall?

Trial Examiner Mouritsen: Were you present at any of these discussions?

The Witness: Which discussions?

Trial Examiner Mouritsen: Any of the discussions about an employees association.

The Witness: On what date? [1031]

Trial Examiner Mouritsen: Any time before the 26th of September, 1941.

The Witness: Well, I say that we talked about it, several of us, around the plant there.

Trial Examiner Mouritsen: The question was immediately before the 26th of September, 1941.

The Witness: I think so.

Trial Examiner Mouritsen: Were you present where some of those discussions took place? Did you talk it over with somebody else?

The Witness: I did.

Q. (By Mr. Yeager): Who did you discuss it with?

A. If I remember right, Tommy Herring, and I spoke about it——

Q. And was that at the time that the Reed Manchester and York people were working there?

A. It was.

Mr. Petersen: To which we object unless you fix the time that the Reed Manchester and York people were there.

Mr. Whitelaw: I think the time has been fixed by three or four witnesses.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: How long was this before the 26th of September, 1941?

The Witness: Between the 15th and the time I got off vacation, and the 26th.

Trial Examiner Mouritsen: What time did you go on [1032] vacation?

The Witness: The first 15 days in September.

Trial Examiner Mouritsen: Where did the conversation take place?

The Witness: In the engine room.

Trial Examiner Mouritsen: Anyone else there?

The Witness: I don't think so.

Trial Examiner Mouritsen: What did you say and what did Herring say?

The Witness: Well, I asked Tom what he thought about it, whether we should join the A. F. of L. or whether we should start an independent union, and he seemed to think whichever way the majority of the employees went at the time that we started operations, why, he would join the employees as a whole, at the time operations started; when the management had decided upon who would be re-employed, as we knew a number of men would be laid off.

Trial Examiner Mouritsen: Did you say that or did Herring say that?

The Witness: That is what I said. I said that then would be the best time for us to start, if we had an association—to start after we knew who was going to be laid off and who wasn't, rather than to take in consideration those that were not at the time

(Testimony of Merton Kirkwood Stout.)

even employees, because some were entirely laid off and some temporarily laid off and not [1033] knowing for sure how many of the employees of the Ice Company would be off, it should be by those actually employed rather than by those who might be laid off or those who might never be put on again.

Mr. Petersen: Can we ask the witness to specify a little bit louder some of this, because it is very interesting and I can't hear it?

Trial Examiner Mouritsen: Keep your voice up.

Q. (By Mr. Yeager): Was there anything more said at that time that you recall?

A. No, we didn't decide on anything definite.

It was like you talk over anything, we thought we would talk over what was to our best advantage.

Q. Then after the meeting at the Labor Temple on September 26, 1941, were there any further discussions concerning employee associations that you heard?

A. Yes, there was.

Q. About when was it that that discussion took place?

A. Well, I should say the next day after we went back on the shift.

Q. And who was present at that conversation?

A. Tommy Herring and I talked it over again about the advantages—what would be best.

Q. What did you say and what did he say, to the best of your memory? [1034]

A. Well, he come to me and I remember I was sitting on the front platform, the clear ice delivery

(Testimony of Merton Kirkwood Stout.)

platform, and he came to me and asked me what I thought about my having joined the union over here, signed up.

I told him, "Well, I don't know whether I did it for the best or not", for this reason: The way I understand it—understood at first, that we would be affiliated—affiliated with the A. F. of L. and have our own officers, but the way I gather it now we will be dominated entirely by the A. F. of L. and if they say to do something, regardless of whether we think it is really well, we will still be compelled to do as they think.

Q. Is that what you told him?

A. Yes, sir.

Q. *Is that what you told him?*

A. *Yes, sir*

Q. Then tell what else was said.

A. I think that was about all. He said he thought in a way, maybe, I was right. He asked me if I still thought I would stay in the A. F. of L. and I told him I didn't know; that I had pretty much made up my mind that I will drop them out—that is, drop out, even having paid in to become a member, that I would drop out as a member—as an active member over there.

Trial Examiner Mouritsen: Was that all that was said? [1035]

The Witness: All that I can recollect.

Q. (By Mr. Yeager): When was the next time you heard any discussion concerning the Employees Association?

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: When was the first time you heard any discussion after that time?

Q. (By Mr. Yeager): After that time.

Trial Examiner Mouritsen: Well, at the first one he did not state anything about an employees association.

The Witness: I thought I said that the first time we talked about an employees association was in the spring.

Trial Examiner Mouritsen: When did you next participate in a discussion about an employees association?

The Witness: Well, we discussed it every day around there. I don't remember who particularly, but I know after that talk with Tommy Herring and right at that time, we were the most interested in it, but we didn't know exactly whether my being a member of the A. F. of L. I should—what I should do about it, whether if I did anything with the A. F. of L. and with the other, it didn't look as I was being coerced one way or the other or what.

Trial Examiner Mouritsen: Frankly, I don't know what you mean, but the question is, Mr. Witness, after the 26th of September, or, 26th of September, 1941, when did you participate in any discussions about the formation of an employees association? [1036]

The Witness: I did.

Trial Examiner Mouritsen: About when did that occur?

(Testimony of Merton Kirkwood Stout.)

The Witness: The next day, I believe.

Trial Examiner Mouritsen: And with whom?

The Witness: Tom Herring.

Trial Examiner Mouritsen: Well, is that the one you have already told us about?

The Witness: It is.

Trial Examiner Mouritsen: Well, when was the next time after that that you talked to Herring or talked with Herring or anyone else about it?

The Witness: I don't know. I believe we discussed it, he and I, practically every day around there. It was up for quite some time. In fact, it was along until we formed the union and all the time through that time that we formed an employees association.

Q. (By Mr. Yeager): Who did you discuss it with—what employees there?

A. Principally Tom Herring and I. We were the only two employees who were right then favorable that I knew of—favorable of having an employees union.

Q. Well, did you take it up with any of the other employees out there?

A. Right close to that time all of us were laid off on account, if I remember right, the York man was called in to [1037] Los Angeles and none of us were working for a few days after that.

Q. All right. After you came back to work did you discuss this matter of an employees association with the other employees there?

A. We did ask them after we came back to work.

(Testimony of Merton Kirkwood Stout.)

Q. Who did you talk to?

Mr. Ryan: When was this?

The Witness: As they were called back to work.

Mr. Ryan: When was that?

The Witness: Well, the exact date I couldn't say. It was between—I think it was along in October when the plant started up with its regular personnel that it would have for the coming year. Then each one we would talk to as they came back to work.

Trial Examiner Mouritsen: Mr. Witness, the record shows so far that the plant started up on the 29th of October, 1941.

The Witness: Yes.

Trial Examiner Mouritsen: For the 1941-42 season. Does that help you to fix the time any?

The Witness: Well, that is just what I was saying. Now, we will say on the 29th of October George Harlan came back and Pete Drinkard came back, Simon Hogue came back, Lloyd Gettle came back, and any other employees that came [1038] back we asked what they thought about an employees union.

Trial Examiner Mouritsen: Did you do that?

The Witness: I did part of it and part of it was done by Tom Herring and part of it by George Harlan.

Q. (By Mr. Yeager): Prior to the time that these men came back in the latter part of October, had you had any organization meetings of the Association?

(Testimony of Merton Kirkwood Stout.)

A. Well, it was the way the employees, most of them looked at it——

Trial Examiner Mouritsen: Now, that is not the question.

Mr. Yeager: Just answer my question.

The Witness: Will you restate the question?

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: There being no employees there, why, we couldn't very well form an association before.

Q. (By Mr. Yeager): Did you have any meetings of the employees prior to the end of October?

A. Yes.

Q. When was the first one and where did it take place?

Trial Examiner Mouritsen: One question at a time.

The Witness: I couldn't state exactly the exact time.

Trial Examiner Mouritsen: We don't care about the exact date; if you can fix it approximately that is what we [1039] would like.

The Witness: I would say around the 15th of October.

Q. (By Mr. Yeager): Where did that take place, Mr. Stout?

A. A few of the employees there at the plant one morning, and I happened to be over there, we decided then that we would actively begin an organization.

(Testimony of Merton Kirkwood Stout.)

Q. And where did you have your meeting?

A. Had the meeting, I believe, at my house.

Q. And who were present?

A. I think at that time there was only George Harlan and Tom Herring and I believe Dick Ireland was there—just an employees get together meeting.

Q. And who called that meeting?

A. I believe I did.

Q. Was Mr. Osborne present? A. No.

Q. Had any contact with Mr. Osborne been made up to that time?

A. I had not contacted him.

Q. Had you had any conversation with him?

A. I had not.

Q. Had he ever approached you? A. No.

Q. What was discussed at that meeting at your house around the 15th of October? [1040]

A. Well, we discussed—

Trial Examiner Mouritsen: If you can tell us who said what.

The Witness: I believe I told them that until the full personnel was hired that we—if any two or three of us decided on anything that it wasn't giving the other members that might later on be hired, an equal part in saying what would take place, and it would be better to let it go until the whole personnel was hired.

Q. (By Mr. Yeager): Were there any more organization meetings that month?

(Testimony of Merton Kirkwood Stout.)

A. Not until after the full personnel was hired about the 29th of October.

Q. Did you attend any meetings that Mr. Osborne was present at?

A. One at George Harlan's house.

Q. When did that take place, approximately?

A. When we first started up,—when we first organized an association—when we signed the by-laws and constitution and started our minutes on our record books.

Q. When was that, approximately?

A. Right at the end of October.

Q. What did Mr. Osborne say at that meeting?

A. I believe he said that George Harlan had asked him to come over and show us just what we had to do to keep our [1041] records straight.

Q. Had any officers been elected up to that time?

A. I don't believe so.

Q. Were officers elected at that meeting, if you recall?

A. Let me see—no officers were elected. I believe on October 30th—I can look in my minutes and see.

Trial Examiner Mouritsen: Let us get these minutes and see if we can't get some certainty about this thing.

Q. (By Mr. Yeager): Are you an officer or were you an officer of the Employees Association in 1941? A. Yes.

Q. What office did you hold?

A. Secretary-treasurer.

(Testimony of Merton Kirkwood Stout.)

Q. And did you keep a record of the minutes after you were elected secretary? A. I did.

Q. Secretary-treasurer? A. I did.

Q. And do your minutes date back to previous meetings or did you just commence keeping minutes from the time you were elected?

A. I just commenced keeping minutes from the time I was elected.

Q. Do those minutes refer to any previous meeting? A. I believe not. [1042]

Mr. Ryan: May I see them before he starts testifying from them?

Mr. Yeager: Do you want to come up and look at them?

Mr. Ryan: I think it is pretty crowded up there.

Mr. Smith: Do you mind if I look over your shoulder?

Trial Examiner Mouritsen: Take a short recess.

(Short recess.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Yeager): Mr. Stout, do you have your minute book before you? A. Yes.

Q. And when does your minute book indicate that you first commenced keeping minutes?

A. Thursday, October 30, 1941.

Q. And those minutes of October 30, 1941, what are those a record of?

A. They are a record of the date after we had actually signed the constitution and by-laws.

Trial Examiner Mouritsen: Are those minutes

(Testimony of Merton Kirkwood Stout.)

of October 30th a record of a meeting held on that date?

The Witness: They are.

Trial Examiner Mouritsen: And do the minutes—when did you record those minutes in the book?

The Witness: I jotted down at that time what took [1043] place and when I got home I wrote them up in the book from the memorandum and the notes taken at the meeting.

Trial Examiner Mouritsen: Notes taken at the meeting?

The Witness: Yes.

Trial Examiner Mouritsen: And do those minutes of October 30th set forth the business that transpired at the October 30th meeting?

The Witness: It does.

Mr. Yeager: I would like to have read into the record the minutes of that meeting, Mr. Examiner.

Mr. Petersen: Can't we do that by stipulation—say that the minutes show certain officers were duly elected, without having to read it?

Mr. Yeager: It would be as short to read the stipulation.

Trial Examiner Mouritsen: Do you have any objection to that procedure?

Mr. Petersen: No.

Trial Examiner Mouritsen: Let him read them into the record.

Mr. Ryan: That is the only thing I would agree to. He can read them if he wants to, only to show

(Testimony of Merton Kirkwood Stout.)

that that is what appears in the minute book under that date.

Mr. Yeager: And he also testified that he took notes as to what transpired and copied these minutes from those. [1044]

Trial Examiner Mouritsen: It is only an alternative of putting the minute book in evidence.

Mr. Ryan: As an alternative to that he can read them in.

Trial Examiner Mouritsen: I will read them in and you can check me.

“Thursday, October 30, 1941.

“An organization meeting of the employees of the Holtville Ice and Cold Storage Company was held Thursday, October 30, 1941, at the home of M. K. Stout, Holtville, there being present the following members, all of whom had signed the by-laws and constitution of the Association:

“Lloyd Gettle, William Morgan, Simon Hogue, M. K. Stout, George Harlan and Richard H. Ireland.

“There being a quorum present M. K. Stout called the meeting to order and acting as temporary chairman called for a nomination for the office of president.

““Lloyd Gettle placed in nomination the name of George Harlan, also moving that the nominations be closed. It was seconded by Simon Hogue and carried by a unanimous vote.

““The duly elected president, taking the chair, called for nominations for vice-president.

(Testimony of Merton Kirkwood Stout.)

“Simon Hogue nominated Tom Herring, seconded by Lloyd Gettle, who also moved that the nominations be closed. It was seconded by Richard Ireland; carried by a unanimous [1045] vote of those present.

“Nominations were now asked for the office of secretary-treasurer. William Morgan placed in nomination the name of M. K. Stout, seconded by Simon Hogue, also asking that nominations be closed, seconded by Richard Ireland and carried by a unanimous vote.

“The organization being completed, the matter of a bargaining committee was brought up for consideration.

“The president, George Harlan, asked for nominations of two members of the bargaining committee to act with the duly elected officers.

“Richard Ireland proposed Lloyd Gettle, seconded by Simon Hogue, who also moved nominations be closed and the secretary be instructed to cast the unanimous vote; seconded by Tom Herring. Carried.

“Tom Herring proposed G. P. Drinkard, Jr., as the other member, seconded by William Morgan, who also asked the nominations be closed, and the secretary be instructed to cast the unanimous vote, seconded by Simon Hogue, carried.

“The matter of a preliminary proposal setting forth the Association's idea of wages, hours of labor and working conditions were discussed and the bargaining committee authorized to present the con-

(Testimony of Merton Kirkwood Stout.)

clusion of the bargaining committee of the Association and its members, to the management for consideration. [1046]

“There being no further business the meeting was adjourned.

“M. K. Stout, Secretary.”

Trial Examiner Mouritsen: Did I read the minutes correctly, Mr. Stout?

The Witness: Yes.

Q. (By Mr. Yeager): Prior to that meeting. Mr. Stout, had you or any other member of the Employees Association obtained any by-laws?

A. We had.

Q. Or constitution?

A. We had obtained copies of by-laws and the constitution of the Kramer Bakery Company and I believe of the Imperial Ice Company here in El Centro.

Q. And who did you obtain those from?

A. Mr. Whitelaw.

Q. And who was present when you obtained those?

A. I believe they were obtained at two different times.

I, personally, one time, was over and obtained them and I believe at another time George Harlan and Tom Herring were over and got some.

Q. And at the time you obtained your copies were you by yourself? A. I was.

Q. And how did you happen to go there to see Mr. Whitelaw? [1047]

(Testimony of Merton Kirkwood Stout.)

A. Well, several days before that I had talked around to some members of the Imperial Ice Company and the Kramer Baking Company and asked them who they thought had the most knowledge of how we would form an association to comply with the law.

Q. What did they say?

A. Well, he said he would be willing to do that.

Mr. Petersen: May I object.

Q. (By Mr. Yeager): Who did you talk to?

A. I talked to Mr.——

Q. I mean this conversation as to who would be a good person to see.

A. Oh, the driver on the truck that delivers bread in Holtville. I don't know his name.

Q. Where did that conversation take place?

A. That took place in Holtville.

Q. And about when was it that that took place?

A. Well, it was some time—well, I would say around the middle in the week in September—say between the 15th and 20th. I don't mean September, but October.

Q. And what did you say to this driver and what did he say to you?

Mr. Ryan: I object to this line of questioning inasmuch as the witness has been unable to identify the person with whom he talked other than in the manner in which he has, [1048] which is general and indefinite.

Mr. Yeager: It was the driver for the Kramer Bakery Company.

(Testimony of Merton Kirkwood Stout.)

Mr. Ryan: And I move to strike it from the record.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Yeager): What did this driver say and what did you say?

A. I asked him who, in his estimation, would be a good man, and he referred me to Mr. Whitelaw.

Q. Did you tell him "a good man" for what?

A. To tell us how we would start an employees association.

Q. And then did you go to Mr. Whitelaw after that?

A. I did.

Q. How soon after?

A. Oh, I believe probably the next day.

Q. Do you know whether Mr. Herring and Mr. Harlan had already been to see Mr. Whitelaw?

A. I couldn't say.

Q. You went by yourself and what conversation did you have?

A. I did.

Q. You went by yourself?

A. I did.

Q. What conversation did you have—what did Mr. Whitelaw say and what did you say?

A. I asked Mr. Whitelaw if he had any information that he [1049] could give me on how to write up our constitution and by-laws and how we should write up our—any agreement we would sign with Mr. Willard.

Q. And what did he say?

A. He said he had around his office a constitution and by-laws of the Kramer Baking Company,

(Testimony of Merton Kirkwood Stout.)

and a copy of the agreement that they signed at the Kramer Baking Company—signed with their employees and that he had a copy of it. He said he would give me a copy of the contract signed by the Imperial Ice Company with their employees, too.

Q. Was there anything more said?

A. He told me after I looked these over that I could write in any paragraphs that we wanted or to make up a whole new contract from what I could gather from these two points and to bring it back over and he would write it up in legal form.

Q. Was there anything else said?

A. I believe that was all.

Q. Then what did you do with those copies of the Kramer Bakery Company by-laws and constitution?

A. I took them home with me.

Q. Did you present them to the members of the Employees Association?

A. I did.

Q. When? [1050]

A. I would say the next day after I got home.

Q. Who did you show those copies to?

A. All the employees that were on the payroll at that time.

Q. Where?

Mr. Ryan: I object to that.

Q. (By Mr. Yeager): Where was it you showed these copies to them?

A. During the noon hour.

Q. Out at the plant?

A. No; we went over to where we parked our cars at the side of the plant and read them over.

(Testimony of Merton Kirkwood Stout.)

Q. And did you hold any formal meeting at that time? A. I couldn't say that it was formal.

Q. Any kind of a meeting?

A. The members present said to go ahead and draw up whatever I could in the line of the way I thought should be to our best advantage in making an agreement with Mr. Willard.

Q. I am talking about——

Trial Examiner Mouritsen: Who were present?

Q. (By Mr. Yeager): I wanted to find out about the by-laws first, Mr. Examiner. Did you discuss these by-laws with the employees and the constitution that you were to have?

Trial Examiner Mouritsen: I still want to know who talked it over.

Mr. Yeager: I do, too. [1051]

Q. (By Mr. Yeager): Who was there?

A. I would say there was Tommy Herring and George Harlan and it seems like there was one other, but I can't place him.

Q. Where did this conversation take place?

A. Along the street where we park our cars.

Q. And were any changes made in this form that had been supplied to you, or what happened?

A. I showed them these forms and they told me before we could do anything—before we did do anything, to take up the best points in both of these constitution and by-laws and then bring them over and have them typed out by Mr. Whitelaw.

Q. Who did you work out the best points of these papers with?

(Testimony of Merton Kirkwood Stout.)

A. I did what I thought was the best points with Mr. Whitelaw, but I had first jotted down what I thought would be to our advantage before I brought them over to him, to simplify and save time. [1052]

Q. Will you mark this for identification?

(The document referred to was marked as Employees Association Exhibit No. 1, for identification.)

Q. Mr. Stout, showing you Employees Association Exhibit No. 1 for identification, I will ask you if you have seen that before (handing exhibit to the witness)? A. I have.

Q. And what is that?

A. It is the by-laws of the Employees Association of the Holtville Ice and Cold Storage Company.

Q. Is that the final draft that was prepared for your Association?

A. Yes, sir, the one signed by the employees.

Q. Now, prior to your meeting of October 30th that has been read into the record, the minutes of which have been [1057] read into the record, did you obtain those signatures at the end of that day?

A. Part of them—I did part of them. I believe George Harlan obtained part of them and Tom Herring.

Q. And how did you obtain the signatures?

A. Went around to each individual man that the company had decided they would re-employ for the 1940-41 season, I believe.

(Testimony of Merton Kirkwood Stout.)

Q. As they came back to work you contacted them? A. Yes.

Q. And do you know of your own knowledge all of these signatures were on the by-laws before your October 30th meeting? A. They were.

Q. What was your answer? A. They were.

Q. And did that list of 12 men constitute your membership as of October 30th?

A. It did, employees actually known—actually known and we knew they were going into service—knowing that they would go into service.

Q. And were new members added to your Association at later dates? A. They were.

Q. Now, at that particular time, October 30th, was there [1058] any other papers that the members signed in addition to the by-laws?

A. There were not.

Q. And did they sign the constitution?

A. Yes, the constitution and by-laws were on two different sheets.

Q. Was there anything else that they signed—any membership card or anything of that sort?

A. Not at that time.

Q. Later on did you change your procedure for enrollment for employees in your Association?

A. We did. We concluded that after we had our agreement with Mr. Willard, that the by-laws and constitution—they were on a board in the engine room, and anyone could read them and when they had signed a deduction card for the membership dues and for initiation fees, that would be

(Testimony of Merton Kirkwood Stout.)

their signature showing that they had joined the Employees Association.

Q. And when did you commence following that procedure? A. The 1st of January, 1942.

Mr. Yeager: Will you mark this?

(The document referred to was marked as Employees Association No. 2, for identification.)

Q. (By Mr. Yeager): I show you Respondent Ice Company Employees Association Exhibit No. 2, for identification, [1059] and ask you if you have seen that before (handing paper to the witness).

A. I have.

Q. And is that the constitution that you were referring to? A. It is.

Q. Of the Employees Association?

A. It is.

Q. And those signatures on the last page of the exhibit—who obtained those signatures?

A. Well, I did and George Harlan and Tommy Herring. The men were contacted, each one of them, and they signed the other at the same time.

Q. You took that and you took Exhibit 2—you took Exhibit 2 and Exhibit 1 around?

A. Correct.

Q. Around at the same time? A. Yes.

Q. Were all of those 12 signatures on the constitution before October 30th? A. They were.

Q. October 30th meeting? A. They were.

Mr. Yeager: I would like to introduce Exhibits 1 and 2 on behalf of the Respondent Ice Company

(Testimony of Merton Kirkwood Stout.)

Employees Association in evidence as Respondent
Ice Company Employees Exhibits [1060] 1 and 2.

Trial Examiner Mouritsen: Any objection?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: They are received
as marked.

(Thereupon the documents referred to, heretofore marked for identification as Employees Association Exhibits 1 and 2, were received in evidence.)

EMPLOYEES ASSOCIATION EXHIBIT No. 1

By-Laws of the Employees Association of the Holtville Ice and Cold Storage Company

Article I

Meetings

Section 1. Regular meetings of this association shall be held on the second Tuesday of each calendar month unless otherwise designated by the president.

Section 2. Special meetings may be called at any time deemed necessary by the president or at the request of three or more members of this association.

Section 3. At regular and special meetings of this association a quorum shall consist of a majority of the membership present.

Section 4. No business shall be transacted at any special meeting other than that for which the meeting is called.

(Testimony of Merton Kirkwood Stout.)

Article II

Membership

Section 1. All applicants for membership shall be required to sign Collective Bargaining Authorization Form which on being signed by the president shall authorize the secretary-treasurer to include the applicant on the roster.

Section 2. Any member leaving the employment of the Holtville Ice and Cold Storage Company at option of board of directors shall automatically terminate his membership in this association.

Article III

Nominations, Elections and Term of Office

Section 1. The president, vice-president, secretary-treasurer and members of the Bargaining Committee shall be elected by a majority vote of those present at any regular meeting or special meeting called for that purpose.

Section 2. All officers shall be elected at the annual meeting of the first Tuesday in June of each year but must be members in good standing, and no officer shall serve two consecutive terms.

Section 3. Any officer may be removed from office by a two-thirds vote of the whole membership at a regular meeting or at a special meeting called for that purpose, his successor elected at said meeting to hold office for the unexpired term of said officer so removed from office.

Article VI

Duties of Officers

Section 1. The president shall preside at all

(Testimony of Merton Kirkwood Stout.)

meetings of the association and shall have the power to appoint all special committees unless otherwise instructed by the membership.

Section 2. In the absence of the president the vice-president shall preside and perform the duties of the president.

Section 3. The secretary-treasurer shall maintain all records of the association and shall receive, disburse and account monthly for all funds.

Article V

Funds and Expenditures

Section 1. Regular dues in this association shall be \$1.00 per month, payable in advance.

Section 2. Members resigning from the employees of the company shall not be eligible to the return of dues.

Section 3. No expenditure in excess of \$5.00 shall be made in any one calendar month without a majority vote of the membership present at any regular or special meeting.

Section 4. The secretary-treasurer may be required to furnish a bond, the amount of such bond to be determined from time to time by the membership. The premium upon said bond shall be paid by this association.

Section 5. No officer shall receive payment for his services.

Article VI

Penalties

Section 1. There shall be no membership fines.

Section 2. Any member of this association shall

(Testimony of Merton Kirkwood Stout.)

be suspended when two months in arrears for dues, and upon notice in writing being given to said delinquent member and payment not being made within thirty days thereafter, said member shall be automatically dropped from the association and may be reinstated only upon payment of back dues.

Article VII

Resignation and Removals From Office

Section 1. All officers shall have the privilege of resigning at any time excepting that in the case of secretary-treasurer such resignation shall not take effect until a complete audit of said secretary-treasurer funds shall have been made and found to be correct.

Article VIII

Amendments

Section 1. Amendments to the Constitution and by-laws may be made by a two-thirds vote of the membership either at a regular or special meeting called for that purpose or by written assent filed with the secretary-treasurer.

In Witness Whereof, the undersigned employees do hereby accept the said By-Laws as their By-

(Testimony of Merton Kirkwood Stout.)

Laws and agree, each with the other, to abide by the same.

Signed Oct. 30, 1941

Frank Lloyd Gettle

Richard H. Ireland

Tom Herring

Geo. R. Harlan

William T. Morgan

J. J. Cardwell

M. K. Stout

Simon Hogue

N. Ballard

G. C. Dunkard, Jr.

Woodrow Faulkner

Jack Grantham

EMPLOYEES ASSOCIATION EXHIBIT No. 2

Constitution of the Employees Association of the Holtville Ice and Cold Storage Company

Preamble

To unite into one organization employees of the Holtville Ice and Cold Storage Company to promote cooperation between employer and employees regarding hours of labor, wages, working conditions, safety and accident and all other matters affecting employees' interests shall be the aim and purpose of this association.

Article I

Name

The name of this organization shall be the Em-

(Testimony of Merton Kirkwood Stout.)

ployees Association of the Holtville Ice and Cold Storage Association.

Article II

It shall be the object of this association to maintain, through representatives of its own choosing, a continuous medium of the company on hours of work, wages, working conditions and other matters of employment.

Article III

Membership

Any employee who does not have the right to hire and/or fire shall be eligible for membership.

Article IV

Section 1. The officers of this association shall be a president, vice-president, a secretary-treasurer. The powers, duties, term of office and manner of election and removal of officers shall be provided as in the By-Laws.

Section 2. Only regular members in good standing shall be eligible to hold office.

Article V

Section 1. The affairs of this association shall be administered and governed by a General Committee consisting of the president, the vice-president, the secretary-treasurer, and two members at large, to be elected from the membership.

Section 2. The General Committee will be responsible for the transaction of business with the management of the company.

(Testimony of Merton Kirkwood Stout.)

Section 3. The General Committee is authorized to negotiate for this association with the management of the company, written agreements covering such collective bargaining arrangements as may be required, and the president and secretary-treasurer are authorized to execute such agreements after they have been submitted to and approved by the members of this association.

Article VI

Meetings

Section 1. Meetings of this association shall be held at such time and place as designated in the By-Laws.

Article VII

Finances

Section 1. The revenues of this association shall be governed as defined in the By-Laws.

Article VIII

Amendments

Section 1. This constitution may be amended by a majority vote of the members, provided, however, that such amendment does not conflict in any manner with the constitution of this association.

Article IX

Authority

Section 1. The rules contained in "Roberts Rules of Order, Revised" shall govern this association in all cases in which they are applicable and in which they are not inconsistent with the By-Laws or special rules of this association.

(Testimony of Merton Kirkwood Stout.)

Article X

Liabilities

Section 1. Excepting as may be otherwise specified in the By-Laws, this association shall assume no obligations, financial or otherwise, of any of its members.

In Witness Whereof, the undersigned employees doe hereby accept said constitution as their constitution and agree, each with the other, to abide by the same.

Signed Oct. 30, 1941

Frank Lloyd Gettle

Richard H. Ireland

Tom Herring

Geo. R. Harlan

N. Ballard

G. C. Dunkard, Jr.

Woodrow Faulkner

Jack Grantham

William T. Morgan

J. J. Cardwell

M. K. Stout

Simon Hogue

Mr. Yeager: These are originals and we would like to have the privilege of withdrawing them and substitute copies.

Trial Examiner Mouritsen: Leave them during the day and then they may have them copied. Off the record.

(Discussion off the record.)

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: On the record.

Q. (By Mr. Yeager): Mr. Stout, I am showing you Board's Exhibit 5 and referring you to paragraph 15 on page 3, and ask you to read that paragraph. (Handing Exhibit to the witness.)

Do you know of your own knowledge who proposed incorporating that paragraph into the final agreement, Board's Exhibit 5? A. I did.

Q. What? A. I did.

Q. And do you recall when you proposed that? [1061]

A. I believe it was written into the original.

Q. Did that matter come up at one of your meetings?

Mr. Petersen: To which I am going to object as being leading and suggestive. Let the witness tell about it.

Trial Examiner Mouritsen: Overrule the objection.

The Witness: Well, I could not say. I had charge of the drafting with Mr. Whitelaw on that and I took out—I have the copy here of the constitution and by-laws and of the agreement. At one time that was made up between the Imperial Ice Company and their employees. I also had a copy of the by-laws and constitution of the Kramer Baking Company, and I think at one time a copy of their agreement with their employees, and I took out what Mr. Whitelaw and I thought were the best points of these to write up ours.

(Testimony of Merton Kirkwood Stout.)

Q. (By Mr. Yeager): Do you recall discussing that paragraph of Board's Exhibit 5, paragraph 15, at any of the meetings of the Employees Association? A. It was discussed.

Mr. Petersen: To which I am going to object. The minutes of the meeting will be the best evidence.

Trial Examiner Mouritsen: Overrule the objection. Answer the question yes or no—do you recall?

The Witness: No.

Q. (By Mr. Yeager): Do you recall discussing paragraph 15 [1062] of Board's Exhibit 5, with Mr. Willard, at any of these negotiating meetings held with him? A. I do.

Q. And can you fix the date, approximately, when that discussion took place?

A. Between—well, the first meeting—let me see. We signed the constitution and by-laws at the first meeting—they were in the minutes of October 30th, and then the next meeting shows, I believe, November 19th, substantially that, but that is what I remember. Well, in between these two points, this would take place with Mr. Willard among the bargaining committee and him.

Q. Can you fix it any closer than that—between October 30th and November 19th?

A. I could not.

Q. And who was present at the meeting with Mr. Willard when that paragraph was discussed?

A. The bargaining committee.

(Testimony of Merton Kirkwood Stout.)

Q. Were any of the other employees present that you recall?

A. They may have been—I couldn't state for sure.

Q. Now, what did you say in regard to paragraph 15 and what did Mr. Willard say, as best you can recall?

A. The best I recall, Mr. Willard said, "No," he didn't like that paragraph, and then he went on to ask me why I had inserted a paragraph like that in there, and I told him [1063] that the secretary of the Association—that it took a lot of running around off of my hands if he could see fit to put that in. Otherwise I would have to have some particular time or point or place set where members could come and pay their dues or I would have to go around to them and collect them personally, and either way it looked like it was rather hard on us, and if he could see fit to do this it would help a lot.

I believe he still at that time didn't say yes or no, whether this would go in or not, and we left it up to him and later came back for another decision, and he decided then that it would be all right to add this in.

Q. Add paragraph 15 in? A. Yes.

Q. Now, I will refer you to paragraph 16, page 3 of Board's Exhibit 5, and ask you to read that (handing exhibit to the witness).

Do you recall now that paragraph, paragraph 16 of Board's Exhibit 5, being incorporated in the final agreement?

(Testimony of Merton Kirkwood Stout.)

A. I believe the organizing—not the organizing, but the bargaining committee were in favor of a closed shop in the beginning and Mr. Willard thought we ought to have an open shop.

Q. Now, when was that subject discussed that you just mentioned? [1064]

A. At one of these meetings between these two dates that I set before, October 30th and November 19th. We had several meetings with him then.

Q. And do you recall who was present?

A. The bargaining committee. I couldn't say who else was.

Trial Examiner Mouritsen: Well, did the bargaining committee in each instance consist of three officers?

The Witness: And two members selected at large. At that time Lloyd Gettle and G. P. Drinkard.

Q. (By Mr. Yeager) Who on behalf of the bargaining committee, if anyone of you, proposed a closed shop?

A. I couldn't say.

Q. Did you?

A. I couldn't say whether I proposed it or not.

Q. Well, did any of the bargaining committee propose it?

A. I think it was agreed to by us at one time that we would ask for a closed shop.

Q. Well, did you at that meeting ask for a closed shop?

A. It seems like we did, verbally.

Q. What did Mr. Willard say?

A. He was opposed to it.

(Testimony of Merton Kirkwood Stout.)

Q. What did he say? (No answer).

Q. As best you can recall.

A. The way I remember, he said, it seems that he didn't [1065] favor a closed shop in any plant. That was my understanding of it. It is not the exact words, but that he wasn't in favor of a closed shop in any plant. He believed in an open shop where a man could go to work and work 15 days and then either quit or be obliged to become a member.

Q. And then do you recall whether this paragraph 16 the way it stands in the final agreement, was in your proposal to Mr. Willard or not?

A. I have another one here made out. I don't know whether it was in the first one or not. I had another one that we worked on and later on gave up and worked on another one. I don't know whether it was in the first one or not. The one I am speaking of comes before that one.

Q. And have the employees at the Holtville Ice and Cold Storage Company complied with paragraph 16 ever since? A. They have.

Q. And are all of the employees of the Holtville Ice and Cold Storage Company that are now employed members of the Employees Association?

A. Those eligible—those that have been there over 15 days.

Q. They are? A. Yes.

Q. Mr Stout, did you attend this meeting in El Centro on September 26? [1066] A. I did.

(Testimony of Merton Kirkwood Stout.)

Q. Did you sign an application for the Teamsters Union, A. F. of L. A. I did. [1067]

Q. But that was a meeting at George Harlan's house, and what did Mr. Osborne say at that meeting?

A. Well, all he said was that in order to have anything like this in proper form we should have a cash book and should have a membership book and should have a minute book, and we should have a receipt book. He said that all of these should be kept up in proper form, and I believe after that he left.

That is about all he said.

Q. Do you recall Mr. Osborne distributing any literature of the Associated Farmers at that meeting? A. No.

Q. Have you ever seen Board's Exhibit 6-A before (handing exhibit to the witness).

Or a copy of it? [1068] A. I have not.

Q. Have you ever seen Board's Exhibit 6-B, or a copy of it (handing exhibit to the witness)?

A. I have not

Q. Did Mr. Willard at any time during the organization of the Employees Association talk with you concerning it? A. He did not.

Q. Did you confer with him concerning the Employees Association? A. I did not.

Q. Did you talk with Pete Pool or did he talk

(Testimony of Merton Kirkwood Stout.)

with you concerning the formation of the Employees Association? A. No.

Q. Did you talk with Herman Smith or did he talk with you concerning the formation of the Employees Association? A. No.

Q. Are you still the treasurer of the Employees Association? A. I am.

Q. And are you functioning at the present time as an Employees Association? A. We are.

Q. Do you have a bank account?

A. We do.

And do you still keep your minutes up?

A. I do. [1069]

Mr. Yeager: That wasn't intended to be mercenary. I was merely showing they are still active.

Q. (By Mr. Yeager) Mr. Stout, there has been—well, I will put it this way: Do you know whether Mr. Whitelaw was paid for his services for furnishing you with these copies of the by-laws and so forth? A. He was.

Q. Who paid him? A. I did.

Q. And did you pay him by way of cash or check? A. I paid him cash.

Q. How much did you pay him? A. \$25.

Q. About when was it you paid him?

A. Some time in December, 1941.

Q. Where did that money come from?

A. Come from the cash dues and initiation fees collected.

Q. Did the Holtville Ice Company ever contribute anything to your organization?

(Testimony of Merton Kirkwood Stout.)

A. No.

Mr. Ryan: Object to that as calling for the conclusion of the witness.

Trial Examiner Mouritsen: I suppose you mean financially?

Mr. Yeager: Yes, financially. [1070]

The Witness: He did not—they did not.

Q. (By Mr. Yeager) Did Mr. Willard?

A. Mr. Willard did not.

Mr. Yeager: I believe that is all.

Cross Examination

Q. (By Mr. Ryan) You went down to the A. F. of L. on the evening of September 26, 1941, did you not? A. I did.

Q. You appeared there with a number of other employees from the Holtville Ice and Cold Storage Company on that occasion, didn't you?

A. I did.

Q. You listened to some representative of the A. F. of L. at that time, did you not, the Teamsters Union? You all talked to some Teamsters representative at that time? A. We did.

Q. In the hall? A. Yes, sir. [1071]

Q. (By Mr. Ryan) After you got down to the hall that night, the night you signed your application blank, you first listened to a representative of the A. F. of L. talk to you, isn't that right, a Teamsters representative? A. Yes, sir.

Q. And after you had listened to him, then you employees of the Holtville Ice Company took a vote among yourselves as to whether to sign up with the

(Testimony of Merton Kirkwood Stout.)

A. F. of L. or not on that occasion, isn't that right—took a standing vote?

A. I don't believe we took a vote; we voluntarily signed up. [1072]

Q. You all signed up that were present?

A. I believe so. [1073]

Q. How did you happen to be there on that occasion?

A. I had come over to the plant and Tom, if I remember rightly, had just got off the clear ice delivery.

Q. And who started the conversation?

A. I wouldn't say who started the first word.

Q. What was said by Herring and by yourself on that occasion?

A. Well, I told Tommy that I had signed up over here, but in a way I didn't feel that I had done exactly right.

Q. Why didn't you feel you had done exactly right?

A. At that time, and for, I will say, at least six months before—way long in the spring before the plant shut down it was known we were changed over from Diesel engine set-up to the electric that there would be a number of men [1075] laid off, and also that there was a question brought up which had been discussed, a question about personal relatives working at the plant, and that they also were not going to appear in the 1940-41 season.

Q. How did that affect you? Were you a relative of some one there?

(Testimony of Merton Kirkwood Stout.)

A. No, I have no relatives there.

Q. Then that did not enter into your problem?

A. Yes, it affected me—affected my opinion of why I joined the union and why I dropped out.

Q. Will you explain that a little further?

A. I looked at it like this: The employees that were working there at that time were not giving Mr. Willard a square deal. In fact, they knew that they would not be employees in the coming year and still go into a bargaining agent with some bargaining agreement with some union with the hopes that they could retain their jobs when they had no right to believe that they could, and also that goes into the same effect with the relatives of those working there that were known—that it was known they were going to be laid off.

Q. Did you know you were going to be laid off?

A. No.

Q. Well, how did you think anyone else knew it?

A. They didn't. I wasn't a relative. I didn't know I was going to be laid off. I didn't know I was going to be [1076] kept on. I expected that I would be kept on. [1077]

Q. Did you attend the—did you attend that meeting at Harlan's home when Osborne was there?

A. My understanding is there was two meetings there and I attended one of them.

Q. Was Mr. Osborne at the one you attended at Harlan's home?

A. No. I attended one of them.

(Testimony of Merton Kirkwood Stout.)

Q. And Mr. Osborne was present at that time, is that right?

A. Yes, Mr. Osborne was present at one meeting and I also understand he was there at two meetings, one of which I was not present at.

Q. Now, this meeting that you were at, at Mr. Harlan's home, when Osborne was present, that occurred also before you began to keep your minutes, isn't that right? A. It did.

Q. About when—how long before the date of your first meeting when you kept minutes?

A. A very few days.

Q. A few days before? Can you tell us what Mr. Osborne said at that meeting that you were at, at Mr. Harlan's home?

A. I still have these dates wrong.

The meeting that he was there, that I attended, was the one where he instructed us on how to—showed us how to keep our books. The other meeting that he was there I did not attend. [1081]

Q. The one you were at was when he instructed you how to keep your minute book and that was about how long—a few days or so before?

A. No, that was that same evening that we started the organization.

Q. To keep your books?

A. That we voted on the starting of our organization to keep the minutes, and that—

Trial Examiner Mouritsen: You say that was the meeting where you voted to keep the minutes,

(Testimony of Merton Kirkwood Stout.)

or was that the meeting where you actually did start to keep the minutes?

A. Where we actually did, I guess.

Q. (By Mr. Ryan) Did Mr. Osborne tell you how to keep your minutes in your book?

A. He told us that we should have a roster of names of those that belonged, showing that they paid initiation fees and dues. He told us we should keep a minute book and keep a cash book—keep account of the cash paid in and paid out.

He advised us it probably would be to our best advantage to keep a bank book—keep all of our money in the bank.

Q. Now, before this time when Mr. Osborne was at this meeting and instructed you how to keep your books, as you have just testified, you had had a meeting with Mr. Willard, had you not, with respect to attempting to bargain with [1082] respect to working conditions? A. We had.

Q. And that had taken place a couple of weeks before, had it? A. No, not that far before.

Q. Well, a week before, would you say?

A. Within the week before.

Q. And were you present at that meeting?

A. I was.

Q. Which took place in Mr. Willard's office?

A. On of them—there were several meetings.

Q. There had been several meetings before?

A. Well, there had been several of the employees had been in there and——

Q. To see Mr. Willard? (No answer.)

(Testimony of Merton Kirkwood Stout.)

Q. How many meetings had you attended up to the time—prior to the time at which Mr. Osborne showed you how to keep your minutes?

A. Prior to that?

Q. Yes, how many meetings had you had with Mr. Willard before that? A. I know of one.

Q. When was that meeting, if you can remember?

A. After the plant started operations. [1083]

Q. The plant had not started operations yet, had it?

A. I say after the plant had started operations, when I was in there.

Q. Weren't you in a meeting with Mr. Willard before the plant started to operate?

A. We had no meeting with Mr. Willard before the plant started operations, because the employees did not know who were going to be employed, so we didn't consider ourselves employees until after the plant had started operations.

Trial Examiner Mouritsen: Mr. Witness, the record indicates so far that the operations of the plant started for that season on October 29, 1941.

The Witness: I say we had no meeting with Mr. Willard that I attended.

Q. (By Mr. Ryan) That you attended?

A. That I attended.

Q. Now, you are saying there was none that you attended before that, is that right?

A. I know none of this I had anything to do

(Testimony of Merton Kirkwood Stout.)

with came up until after the plant started. I am positive of that fact.

Q. When did you get your by-laws for the Association?

A. We had been working on that ever since we agreed to—I would say from around—well, right directly after this meeting with the A. F. of L. when I decided I didn't like the set-up there.

[1084]

Mr. Petersen: May I ask the latter part of the answer be stricken as not responsive.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Ryan) I believe you testified that you went to Mr. Whitelaw's, is that right, to get some advice? A. I did.

Q. And get some material on forming an association? A. I did.

Q. What was that—was that a short time after you had joined up with the A. F. of L. or made application for membership in the A. F. of L?

A. It was.

Q. About how long would you say, Mr. Stout?

A. I would say within a week.

Q. And at that time what material did you obtain from Mr. Whitelaw?

A. We got a constitution and by-laws of the Kramer Baking Company and I got a working agreement from the Kramer Baking Company's Association.

(Testimony of Merton Kirkwood Stout.)

I also got a copy of the by-laws and constitution of the Imperial Ice Company and a copy of one of the contracts that they had worked on in their agreement with the Imperial Ice Company.

Q. After you got that material from Mr. White-law, did you testify that you then, thereafter, the next day or so, had [1085] a meeting at the plant with a few of the boys out near the parking lot where the cars are parked?

Trial Examiner Mouritsen: Do you understand the question?

The Witness: Maybe not in the way he said it.

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: I did.

Q. (By Mr. Ryan) And with whom did you have a gathering or meeting?

A. I believe Tom Herring and George Harlan—the three of us that were particularly interested in organizing an employees association, after the plant was started up, to try and get our constitution and by-laws in working order by the time it would start up.

Q. What did you do and say out there at the cars that day—out where the cars were parked?

A. I don't know—one thing was said that we would go ahead—I would work on this and draw it up and they agreed to that and when we got it drawed up in a reasonable form and the plant started up, then we would have something for a basis to start our association on.

(Testimony of Merton Kirkwood Stout.)

Q. Did Mr. Harlan and Mr. Herring tell you on that occasion out near the cars when you were discussing this material that you had gotten from Mr. Whitelaw, that you should go [1086] ahead and draw up something from that?

(No answer.)

Q. You and Mr. Whitelaw? A. Yes, sir.

Q. Is that what they told you? A. Yes.

Q. And you proceeded to do that, did you?

A. I did.

Q. You went up to Mr. Whitelaw's and you worked them out together, did you?

A. No. I drew up what I thought would be a working basis, and then I took that up there.

Q. To Mr. Whitelaw's office? A. Yes.

Q. About how long was it after this time that you had the meeting down at the cars, where the cars were parked?

A. Oh, I will say three or four days.

Q. Then you had a meeting at Mr. Whitelaw's office? A. I did.

Q. What took place up there?

A. I brought what I had up there and showed it to him and some things he didn't think were correct and he rephrased them, wrote them out in different form, and had them typed according to the division he thought they ought to come under.

Q. He did that in his office? [1087]

A. Yes, sir.

Q. Or had it done in his office?

(Testimony of Merton Kirkwood Stout.)

A. Yes, sir.

Q. And after you had gotten the material—after it was typed up in his office there, what did you do next?

A. We took the one that said “Constitution and By-Laws” and the one that said “Contract” to be signed by Mr. Willard, I took a copy of that over home and we used that later on as a basis of our negotiations with Mr. Willard, after we started the plant. I think you say that was on the 29th of October when the plant started.

Q. Mr. Stout, I show you what is in evidence as Respondent Ice Company’s Exhibit 3 and ask you to look at it and tell me if you know what it is (handing exhibit to the witness).

A. It was among the first proposals given to Mr. Willard. Whether it was the first one in writing I wouldn’t say, but it was among the first ones.

Q. Is that what you obtained from Mr. Whitelaw, the typed pages? Are they what you obtained from Mr. Whitelaw on this occasion when you told about being up in his office and he typed it up for you?

A. Part of it is.

Mr. Petersen: A little louder.

The Witness: The typed pages are. [1088]

Q. (By Mr. Ryan): Whose writing is on this white sheet which is written in ink?

A. That is mine.

Q. Is that your writing? A. Yes, sir.

Q. When was that put on there?

A. That was put on there while the employees

(Testimony of Merton Kirkwood Stout.)

were making—we were trying to get up that agreement and what we put into this particular paragraph in the agreement, that was our main point of—well, how would you say that—the main trouble with the wage scale, the wage and hour scale—how we would adjust that.

Trial Examiner Mouritsen: I think you said, Mr. Witness, when you went up to Mr. Whitelaw's office on this occasion and worked out the by-laws and constitution, that you also worked on some form of a working agreement or proposal from the union, is that right?

The Witness: From the——

Trial Examiner Mouritsen: Association.

The Witness: From the Imperial Ice Company Association and the Kramer Baking Company Association, four hours. [1089]

Trial Examiner Mouritsen: Well, what I want to know is this the document that you worked out on that occasion with Mr. Whitelaw?

The Witness: I don't believe it is. It is a form that he had there from some of these other companies that we filled in part of, and I think we have one that we worked out and then a little later on there was another one worked out—the one that we signed with Mr. Willard.

Trial Examiner Mouritsen: Do you know where the first one is that you worked out with Mr. Whitelaw on that occasion?

The Witness: I think I have it here.

(Testimony of Merton Kirkwood Stout.)

Mr. Ryan: Would you look, Mr. Stout, and see if you have it?

(The witness handed a document to the Trial Examiner.)

Trial Examiner Mouritsen: Give them to Mr. Ryan.

Mr. Smith: May we see them, Mr. Ryan?

Mr. Ryan: Surely.

Trial Examiner Mouritsen: Mr. Witness, do I understand this document that you have produced is the original document that you and Mr. Whitelaw worked out?

The Witness: That is the original, yes.

Trial Examiner Mouritsen: That is the first one.

The Witness: First one. This one here was the form he had in his office, and he thought we could go ahead with that until we could get this—until we could get it completely [1090] typed out.

Trial Examiner Mouritsen: You mean this other document that Mr. Ryan showed you?

Mr. Ryan: Ice Company Exhibit 3.

The Witness: This I don't believe we worked up. I think it was something he had there, according to my recollection of it, and that is the first one that he drew up in full. That is my recollection of it.

Trial Examiner Mouritsen: What I want to know is, was this the first one that you had—that is Respondent's 3, was that the first one that you had, or was this one?

The Witness: 3 was the first one we had and presented to Mr. Willard.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: Well, is that the one that you and Mr. Whitelaw worked out on this first occasion when you were up to see him about a proposal?

The Witness: Yes, he gave me a part of it, and I gave him part of it and we worked this out.

Trial Examiner Mouritsen: Well, is the part that you worked out this part in longhand?

The Witness: Yes.

Trial Examiner Mouritsen: In black ink.

The Witness: Yes, in longhand, and I believe this was written by Mr. George Harlan.

Trial Examiner Mouritsen: You mean the pencil or the [1091] whole thing—do you mean the writing in pencil on the yellow sheet, or the whole thing including the ink?

The Witness: I believe—I think—I don't know—I don't know the writing.

Trial Examiner Mouritsen: You are not sure who put the pencil notation on the paper.

The Witness: George Harlan presented it and he made notations on the things that we would later on put in our next agreement.

Trial Examiner Mouritsen: Well, you say George Harlan presented that. Did he present it at a meeting where you were present?

The Witness: He did.

Trial Examiner Mouritsen: Was that a meeting with Mr. Willard?

The Witness: With Mr. Willard.

(Testimony of Merton Kirkwood Stout.)

Mr. Ryan: Would you look, Mr. Stout, and see if you have it?

(The witness handed a document to the Trial Examiner.)

Trial Examiner Mouritsen: Give them to Mr. Ryan.

Mr. Smith: May we see them, Mr. Ryan?

Mr. Ryan: Surely.

Trial Examiner Mouritsen: Mr. Witness, do I understand this document that you have produced is the original document that you and Mr. Whitelaw worked out?

The Witness: That is the original, yes.

Trial Examiner Mouritsen: That is the first one.

The Witness: First one. This one here was the form he had in his office, and he thought we could go ahead with that until we could get this—until we could get it completely [1090] typed out.

Trial Examiner Mouritsen: You mean this other document that Mr. Ryan showed you?

Mr. Ryan: Ice Company Exhibit 3.

The Witness: This I don't believe we worked up. I think it was something he had there, according to my recollection of it, and that is the first one that he drew up in full. That is my recollection of it.

Trial Examiner Mouritsen: What I want to know is, was this the first one that you had—that is Respondent's 3, was that the first one that you had, or was this one?

The Witness: 3 was the first one we had and presented to Mr. Willard.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: Well, is that the one that you and Mr. Whitelaw worked out on this first occasion when you were up to see him about a proposal?

The Witness: Yes, he gave me a part of it, and I gave him part of it and we worked this out.

Trial Examiner Mouritsen: Well, is the part that you worked out this part in longhand?

The Witness: Yes.

Trial Examiner Mouritsen: In black ink.

The Witness: Yes, in longhand, and I believe this was written by Mr. George Harlan.

Trial Examiner Mouritsen: You mean the pencil or the [1091] whole thing—do you mean the writing in pencil on the yellow sheet, or the whole thing including the ink?

The Witness: I believe—I think—I don't know—I don't know the writing.

Trial Examiner Mouritsen: You are not sure who put the pencil notation on the paper.

The Witness: George Harlan presented it and he made notations on the things that we would later on put in our next agreement.

Trial Examiner Mouritsen: Well, you say George Harlan presented that. Did he present it at a meeting where you were present?

The Witness: He did.

Trial Examiner Mouritsen: Was that a meeting with Mr. Willard?

The Witness: With Mr. Willard.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: And that meeting took place after you had secured this document from Mr. Whitelaw?

The Witness: Yes; after we secured this from Mr. Whitelaw and in the meantime we worked this up and then later on we worked up the one that is now signed by Mr. Willard and by the president and vice president and secretary.

Trial Examiner Mouritsen: Now, to get it clear, this document that you presented here today was prepared after [1092] Respondent's Exhibit 3, which was this document, was prepared?

The Witness: Yes.

Trial Examiner Mouritsen: Now, how long after, do you know?

The Witness: I believe, if my memory is correct, it was probably a week or so after this one was completed.

Trial Examiner Mouritsen: Well, now, after you got this document, that is Ice Company's Exhibit 3, from Mr. Whitelaw, what did you do with it then?

The Witness: After I got this part here, I took this over and the bargaining committee agreed to these facts that were wrote on that. I wrote down "agreed to them" that we would—that they would be turned in on this particular subject as to wages and working conditions, and that later on we would have a full typewritten agreement written out by a lawyer and present that to him.

Trial Examiner Mouritsen: Were you ever present at any meeting with Mr. Willard where this Re-

(Testimony of Merton Kirkwood Stout.)

spondent Ice Company's Exhibit 3 was presented to him as a basis for discussion?

The Witness: I was. [1093]

Trial Examiner Mouritsen: I think you said October 30th and November 19th, 1941, is that correct?

The Witness: I could say exactly by looking at the book.

The bargaining committee went to Mr. Willard several times presenting different ones of these agreements, and we couldn't reach a conclusion. The bargaining committee left and we tried to make out something from what we gathered he would favor and what we thought might be to our advantage that he would sign and we could sign and do ourselves justice too. [1094]

Q. (By Mr. Ryan): I believe you stated that during the negotiations with Mr. Willard the question of this closed shop proposition, which I shall refer to as "a closed proposition"—it may not be exactly that, in your contract, Paragraph 16, was discussed, is that right? A. It was.

Q. I show you Board's Exhibit 5, which is the agreement entered into between the Employees Association and the company and which became effective November 1, 1941.

I direct your attention to paragraph 16.

(Handing exhibit to witness.)

I believe you stated that at first when you discussed that with Mr. Willard he was opposed to it, is that right?

(Testimony of Merton Kirkwood Stout.)

A. I believe he was opposed to a closed shop. I believe the distinction made between an open shop and a closed shop is a closed shop you have to be a member before you can become an employee. That is a closed shop. An open shop, the way I remember, if that is correct, within a given or stated length of time an employee must become a member of the Association or have an opportunity to retain his job.

Q. All right. You have given us your definition. Now, [1096] can you tell us whether or not Mr. Willard at any time ever objected to the proposition which is in the contract as Paragraph 16?

A. Not to 16.

Q. Never objected to that?

A. (No answer).

Trial Examiner Mouritsen: You will have to speak up.

The Witness: I said not to 16.

Q. (By Mr. Ryan): Not to that paragraph? That was agreeable to him from the first time, was it?

A. That we proposed it, if my memory serves me.

Q. And do you know when you first proposed it to Mr. Willard?

A. No, I couldn't say exactly the first time. If there was any of the old agreements around that we worked on it would be in them.

Q. But you know that he agreed to it when it was in the form that is there, is that right?

A. Yes, sir.

Q. That he never objected to it?

A. No.

(Testimony of Merton Kirkwood Stout.)

Q. At any time?

A. My recollection of it in this form he never objected to it. [1097]

Redirect Examination

Q. (By Mr. Yeager): I will ask you if you have seen Employees Association Exhibit No. 3 for identification.

Mr. Ryan: I would like to ask this witness a few questions before he is shown this exhibit.

Mr. Yeager: That is all right.

Voir Dire Examination

Q. (By Mr. Ryan): Mr. Stout, did you read over—first of all, this is the constitution.

Mr. Yeager: Yes.

Q. (By Mr. Ryan): Did you read over the constitution of the Holtville Ice Company Employees Association and analyze it prior to its being adopted by the Association? A. I had.

Q. Did you understand the provisions?

A. Well, in most respects I would say I did.

Mr. Ryan: O. K.

Q. (By Mr. Yeager): I show you Exhibit No. 3 for identification of the Employees Association, and ask you if you have seen that before. [1127]

(Handing exhibit to the witness.)

A. I have.

Q. And where did you first see that exhibit?

A. If I remember rightly in Mr. Whitelaw's office.

(Testimony of Merton Kirkwood Stout.)

Q. And when was that?

A. When I was over there seeking advice on how to start drawing up the constitution and by-laws.

Q. And was this given to you? A. It was.

Q. And was this one of the papers that was used as a basis for your constitution?

A. That was one of them.

Q. Do you know whether any paragraphs in this constitution were copied into your constitution or not—in the constitution of the Employees Association?

A. I would not say whether it was copied word for word, but the general meaning of them was.

Mr. Yeager: That is all.

I would like to introduce this as Employees Association Exhibit No. 3.

Mr. Whitelaw: You will have to furnish extra copies.

Mr. Yeager: Yes.

Trial Examiner Mouritsen: What is the purpose?

Mr. Yeager: The purpose is—do you want this in the record? [1128]

Trial Examiner Mouritsen: Sure.

Mr. Yeager: The purpose of this is—one of these paragraphs was copied directly from—one of the paragraphs in the Employees Association's constitution was copied from this constitution but was copied incorrectly in that one whole line was left out, and I am going to bring out from a subsequent

(Testimony of Merton Kirkwood Stout.)

witness the fact that that was done through inadvertence.

Trial Examiner Mouritsen: I will receive it as Employees Association Exhibit No. 3 in evidence.

(Thereupon the document heretofore marked as Employees Association Exhibit No. 3 for identification, was received in evidence.)

EMPLOYEES ASSOCIATION EXHIBIT NO. 3

Constitution of the Cramer Baking Company

Employees Association

Imperial and Yuma Counties District

Preamble

To unite into one organization employees of the Cramer Baking Company, a corporation, in Imperial and Yuma Counties, to promote cooperation between employer and employees regarding hours of labor, wages, working conditions, safety and accident prevention, health, welfare, efficiency and harmony of operation, and all other matters affecting employees' interests shall be the aim and purpose of this association.

Article I

Name

The name of this organization shall be the Cramer Baking Company Employees Association, Imperial and Yuma Counties District.

Article II

It shall be the object of this association to maintain, through representatives of its own choosing, a

(Testimony of Merton Kirkwood Stout.)

continuous medium for collective bargaining for its members with the management of the company on hours of work, wages, working conditions and other matters of employment.

Article III

Membership

Any employee who does not have the right to hire and/or fire shall be eligible for membership.

Article IV.

Section 1. The officers of this association shall be a president, vice-president, a secretary-treasurer. The powers, duties term of office and manner of election and removal of officers shall be provided as in the By-Laws.

Section 2. Only regular members in good standing shall be eligible to hold office.

Article V.

Section 1. The affairs of this association shall be administered and governed by a General Committee consisting of the president, the vice-president, the secretary-treasurer, and two members at large, to be elected from the membership.

Section 2. The General Committee will be responsible for the transaction of business with the management of the company.

Section 3. The General Committee is authorized to negotiate for this association with the management of the company written agreements covering such collective bargaining arrangements as may be required, and the president and secretary-treasurer

(Testimony of Merton Kirkwood Stout.)

are authorized to execute such agreements after they have been submitted to and approved by the members of this association.

Article VI.

Meetings

Section 1. Meetings of this association shall be held at such time and place as designated in the By-Laws.

Article VII

Finances.

Section 1. The revenues of this association shall be governed as defined in the By-Laws.

Article VIII

Amendments

Section 1. This constitution may be amended by a majority vote of the members, provided, however, that such amendment does not conflict in any manner with the constitution of this association.

Article IX

Authority

Section 1. The rules contained in "Roberts Rules of Order, Revised," shall govern this association in all cases in which they are applicable and in which they are not inconsistent with the By-Laws or special rules of this association.

Article X

Liabilities

Section 1. Excepting as may be otherwise specified in the By-Laws this association shall assume no

(Testimony of Merton Kirkwood Stout.)

obligations, financial or otherwise, of any of its members.

In Witness Whereof, the undersigned employees do hereby accept said constitution as their constitution and agree, each with the other, to abide by the same.

.....

.....

.....

.....

Mr. Yeager: That is all. [1129]

Q. (By Mr. Ryan): Mr. Stout, I believe you stated that some of those persons who signed the constitution and by-laws came to you and advised you that they were going back to work for the company in the 1941-1942 season, is that right? [1148]

A. Some of them came to me and stated that they were going back to the company to be rehired, yes.

Q. Can you name any particular individual that did that, who signed the constitution and by-laws, who came to you and told you he was going back?

Mr. Whitelaw: To which we object. It is already in evidence.

Trial Examiner Mouritsen: Other than Faulkner, I think he said.

The Witness: I think Morgan did.

Q. (By Mr. Ryan): Let us take Faulkner first.

(Testimony of Merton Kirkwood Stout.)

Where were you when he came to you on this occasion and told you he was going back to work?

Mr. Smith: Just a minute. That is objected to. I don't recall the witness testifying that Faulkner came to him.

Q. (By Mr. Ryan): Did Faulkner come to you and tell you he was going back to work and signed the by-laws?

A. I don't know whether he did personally, but I was told that he had. It seems to me like he come to me personally and told me he had.

Q. Do you remember what he said to you in that regard?

A. His exact words I don't recall, but the gist of the matter was that he would be employed in the future, in the near future by the company. [1149]

Q. Did he say anything to you as to why he had come to you to give you that information?

A. The way that I understood it all of the employees before they were entered on our—or could write their names on our constitution and by-laws, had to have been told by the management, Mr. Willard, or informed by somebody, that they were to be re-employed the coming season.

Q. Who made up that provision?

A. The employees themselves said they would not accept anybody in the Association that was not to be employed in the next year on account of other things coming up before that, indicated that some were going to be laid off and we didn't know exactly who—it hadn't been told to us in so many words,

(Testimony of Merton Kirkwood Stout.)

but from other conversations that had been taken up pointed to certain ones who would not be re-employed.

Q. Faulkner had not been at any of your meetings of the Association, your own Association meetings prior to coming to you and telling you that he was going back to work, or had he?

A. I couldn't say for sure.

Q. Do you know how he happened to know that he should come to you and tell you that he was going back to work?

A. Well, it was known that George Harlan and Tom Herring and I had the by-laws and constitution and that we had to have everybody sign that before they were considered an [1150] employee, or, rather, that they had to tell us that they were an employee before they could sign that.

Q. You had an understanding with the company about that?

A. No, among ourselves.

Q. Now, how did the other people know that?

A. We had told several of them around there, but I couldn't mention offhand who, that our Association was to be restricted to only employees and that we would have no outsiders listed in any way that wasn't an employee.

Q. Do you remember any conversation with any employee who came to you and told you that he was going to work during the 1941-42 season?

Mr Smith: Objected to as having been asked and answered twice before

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: I will overrule the objection.

The Witness: Will you read the question?

(Question read.)

Mr. Whitelaw: You mean other than the conversation he had with Faulkner, Mr. Ryan? We object to the form of the question. Mr. Ryan refuses to answer. We object on the ground it is not intelligible. He just got through asking about Faulkner. Now, he is asking if he remembers any conversations he had with any employee.

Trail Examiner Mouritsen: I will overrule the objection. [1151] The witness can state whether he had any.

The Witness: As to actual words that I said between any one employee I don't know, but I talked with several of them.

Trial Examiner Mouritsen: About going back to work?

The Witness: About going back to work, and the date they were to be back on duty.

Mr. Ryan: I have no further questions.

Redirect Examination

Q. (By Mr. Yeager) Mr. Herman Smith or Pete Pool or Mr. Willard, did they ever notify you as to what men were going to be employed for the 1941-42 season?

A. They did not. The only way I knew who would come back was when they came to some one of us three that had the by-laws and constitution

(Testimony of Merton Kirkwood Stout.)

and told us that they were coming back—they were sure they were coming back. [1152]

Redirect Examination

Q. (By Mr. Yeager) Mr. Stout, was this final agreement that was entered into between the Employees Association and Mr. Willard, prepared in its final form before this meeting took place at which it was approved? A. It was.

Q. Do you know whether any employees of the Holtville Ice Company were shown the final agreement prior to that meeting? ----

A. I think they all were.

Q. And where were they shown it?

A. I couldn't say. This had been passed on, I believe, at a meeting. I think it says in the record here—shall [1158] I read what the record says to that fact?

Trial Examiner Mouritsen: I am going to read into the record the November 25, 1941 minutes.

This page contains the record of the meeting of November 25, 1941, of the Association; is that correct?

The Witness: Yes.

Trial Examiner Mouritsen: You check me as I read it into the record:

“November 25, 1941, special wage scale meeting.

“The meeting was called to order by V. P. Tom Herring.

“Present: Tom Herring, Lloyd Gettle, Simon Hogue, Dick Ireland, M. K. Stout and Pete Drinkard.

(Testimony of Merton Kirkwood Stout.)

“After discussion of agreement proposed by employer it [1159] was moved by Simon Hogue and seconded by Lloyd Gettle that members present should agree to the bargaining committee signing the agreement for the year beginning November 1, 1941, and ending November 1, 1942. Motion carried unanimously.

“Secretary’s minutes of November 19th read and accepted.

“There being no other business, meeting was adjourned.

“M. K. Stout, Secretary-Treasurer.”

Did I read that correctly, Mr. Stout?

The Witness: Yes.

Q. (By Mr. Smith): I have a question, Mr. Stout. You refer in there to a contract submitted by “employer.” Did the employer submit any contract to you?

A. Why, he agreed to the final contract that we sent in. That is the way it was submitted by us and he returned our contract back to us saying that he would agree to this contract written up in this form. [1160]

Q. All right. Now, I have a document here I am going to ask the reporter to mark as Respondent Ice Company’s Exhibit No. 7.

(The document referred to was marked as Respondent Ice Company’s Exhibit No. 7, for identification.

Q. (By Mr. Smith): Now, I will show you Respondent Ice Company’s Exhibit No. 7, Mr.

(Testimony of Merton Kirkwood Stout.)

Stout, and I will ask you to look at the last half of paragraph 7.

Mr. Peterson: To which I am going to object.

Q. (By Mr. Smith): Which reads:

“Extra help and common labor without experience shall be paid 60 cents per hour on a 40-hour week. There shall be no deductions other than directed by state, federal and city authorities”, and over to the side in pencil it is marked “55”, and I notice in the border of Exhibit 5, which is the complete contract, “Extra help and common labor without experience shall be paid 55 cents per hour on a 40-hour week”, and I will ask you if that isn’t the only change that you know of that was made by Mr. Willard. [1162]

The Witness: That one was made but I don’t know whether that was the only one made or not.

Q. (By Mr. Smith): Well, I will offer in evidence Respondent Ice Company’s Exhibit 7 for identification. The document will speak for itself.

Trial Examiner Mouritsen: There is no foundation laid for Exhibit 7.

Mr. Smith: All right.

Q. (By Mr. Smith): Mr. Stout, I will now ask you to look at Respondent Ice Company’s Exhibit 7, and state whether or not you have seen that document before. A. I have.

Q. Where and when?

A. I had it made up in Mr. Whitelaw’s office.

[1163]

(Testimony of Merton Kirkwood Stout.)

Q. And was it ever submitted to Mr. Willard by the bargaining committee? A. It was.

Q. And when it was submitted to him was there any pencil notation on the left-hand column of the second page which says, “.55”?

(No answer.)

Q. What is your answer? A. Yes.

Q. Do you know who put that there?

A. No, I don't. I think it was put there because we had an argument over to give first and second and third year men more pay than the extra men got——

Trial Examiner Mouritsen: The question was, do you know who put it there.

Q. (By Mr. Smith): Do you know who put the “.55” there in pencil?

A. I believe he asked—I couldn't say for sure the conversation, but I believe he asked George Harlan that he change that, but I don't know whether George marked that or whether he marked that—Mr. Willard marked that as a change when we should redraft it on account of giving one man more pay than the other one. [1164]

Q. But it is your testimony, is it, that you presented this copy, or one like it, Exhibit 7, to Mr. Willard? A. It is. [1165]

Q. (By Mr. Smith): Mr. Stout, during the recess did you compare Board's Exhibit 5 with Ice Company's Exhibit 7 for identification?

A. I did.

(Testimony of Merton Kirkwood Stout.)

Q. And I am showing you Respondent Ice Company's Exhibit 7, and I will ask you if that was presented to Mr. Willard of the Ice Company before the final draft of the agreement, which is Board's Exhibit 5? [1166]

A. It was.

Q. And what changes were made between Board's Exhibit 5 and Ice Company's Exhibit 7?

A. I find two different changes in that paragraph. One is in regard to relief help. [1167]

Mr. Smith: All right. I will offer into evidence Ice Company's Exhibit No. 7 to show the contract was submitted to the Ice Company by the Employees Association.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Petersen: No objection.

Mr. Ryan: May I have the offer read again?

(Offer read.)

Mr. Ryan: You mean when? [1168]

Mr. Smith: During their last meeting.

Mr. Petersen: May we not state for the record it is an amended proposal amending the first proposal?

Mr. Ryan: That was before it was amended and as suggested by Mr. Willard.

Mr. Smith: Yes, suggested two final changes that were finally written up.

Mr. Ryan: I think it is clear now what it is so I will not object to it.

Mr. Petersen: No objection.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: It is received as Respondent Ice Company's Exhibit 7.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit 7, was received in evidence. [1169])

RESPONDENT ICE COMPANY'S EXHIBIT NO. 7

AGREEMENT

This Agreement, made and executed this first day of November, 1941, by and between the Holtville Ice & Cold Storage Company, and its Successors and Assigns, hereinafter referred to as the Employer, the singular to include the plural, and the Holtville Ice & Cold Storage Company Employees Association, hereinafter referred to as the Association.

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Company, and situated in Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representatives of the employees of the Holtville Ice & Cold Storage Company.

Now, therefore, for and in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

(Testimony of Merton Kirkwood Stout.)

1. The Employer recognizes the Association as the sole and exclusive representative of the employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspension of work by Association members during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement shall be settled by arbitration in the following manner: Each party shall appoint two representatives who may decide the issue by a three-fourths vote, which shall be final and binding on the parties, or failing to so agree, shall by a three-fourths vote elect a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Forty hours shall constitute a week's work.

7. The wage scale shall be as follows:

		Monthly Earnings	
		40 hrs.	48 hrs.
		Operators	
First year	66½c	\$115.00	\$150.00
Second "	69c	119.00	155.00
Third "	72c	125.00	162.44

(Testimony of Merton Kirkwood Stout.)

Store Room and Platform

First year	57½c	\$ 99.48	130.00
Second “	60c	103.80	135.00
Third “	62c	107.00	140.00

Relief help shall be on the same scale of wages as the person relieved. Extra help and common labor, without experience, shall be paid 60c per hour on a forty hour week. There shall be no deductions other than directed by State, Federal and City authorities.

[Pencil Notation in Margin: .55*]

8. An employe having a year's record of employment with the Company will be granted two weeks' vacation with pay. No sick leave is granted but each case will be decided on its merits by the Association and the Company.

9. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

10. This Agreement shall remain in full force and effect up to and including the first day of November, 1942, and continue thereafter from year to year unless one party notifies the other in writing ninety days in advance of the expiration date, of a desire to change the conditions of this agreement.

11. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph six hereof.

12. It is understood and agreed that in the event mandatory laws or governmental rules or regulations applicable to, or in conflict with any of the provisions of this agreement, shall become effective

(Testimony of Merton Kirkwood Stout.)

and binding upon the parties hereto with respect to such conflicting provisions, this Agreement shall be subject to modification to the extent required thereby.

13. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

14. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

15. The Employer agrees to make payroll deductions for monthly dues and fees of the Association members in such amounts as the Association may direct, upon being furnished with membership authorization forms properly signed by the member and the Secretary of the Association, and such collections will be paid over to the Association monthly. Provided, however, that the Employer will be under no obligation to make a payroll deduction for any employee after the Employer has been notified in writing by the Secretary of the Association and the member involved that such employee no longer wishes deductions made. All such deductions so made by the Employer are to be considered as an advance payment of the dues of the Association member for the ensuing monthly period.

16. Any person becoming an employee of Employer shall within fifteen days become and remain a member in good standing of the Association.

(Testimony of Merton Kirkwood Stout.)

17. No existing privileges which have hereto been extended to the employees shall be terminated by the signing of this agreement.

18. Employer shall have the right to discharge, without redress, for dishonesty, drunkenness, drinking on duty, or incompetence.

19. The Employer shall supply bulletin board space for the use of the Association in posting officially signed Association bulletins.

In Witness Whereof, the parties hereto have set their hands.

HOLTVILLE ICE AND COLD
STORAGE COMPANY

By

Its President

HOLTVILLE ICE AND COLD
STORAGE COMPANY EM-
PLOYEES ASSOCIATION

By

Its President

By

Its Vice-President

By

Its Secretary-Treasurer.

—————

Q. (By Mr. Petersen): On the contract, Respondent's No. 7, when this was drawn up, was this drawn up between yourself and Mr. Whitelaw?

A. It was. [1170]

Trial Examiner Mouritsen: On the record. Mr.

(Testimony of Merton Kirkwood Stout.)

Witness, I show you a document marked A. F. of L. Exhibit 2, and I will ask you if that document was prepared by Mr. Whitelaw at your request. (Handing paper to the witness.)

Mr. Smith: We submit the witness should have an opportunity to read it.

Trial Examiner Mouritsen: I am certainly not rushing him in any way.

Mr. Smith: Go ahead and read it before you answer.

The Witness: This one or similar to it was drawn up.

Trial Examiner Mouritsen: Was that prepared by Mr. Whitelaw at your request?

The Witness: Yes.

Trial Examiner Mouritsen: Was that prepared before the time when Respondent Ice Company's Exhibit 7 was prepared?

The Witness: It was.

Trial Examiner Mouritsen: Now, are these documents, Respondent Ice Company's Exhibit 3, and 7, and Board's 5, and this A. F. of L. Exhibit 2 for identification, all of [1173] the proposals which the Association submitted to the Ice Company?

Mr. Smith: Well, just a minute. I object to that. It hasn't been shown that this——

Trial Examiner Mouritsen: Am I stating facts not in evidence?

Mr. Smith: It has not been shown that the A. F. of L. Exhibit 2 was ever submitted to the Ice Company.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: Answer the question, I will overrule the objection.

The Witness: I believe I sent one like this, or similar, as far as I remember. There was one similar to this.

Trial Examiner Mouritsen: But those four documents are the only proposals, written proposals, that were ever submitted to the Ice Company by the Association?

The Witness: No; there was another one around here that was submitted and it is the one that has been argued over about who had it. I believe that is part of it there (indicating).

Trial Examiner Mouritsen: Well, is it this document in handwriting?

The Witness: The part pertaining to paragraph 7 was in handwriting.

Trial Examiner Mouritsen: Who prepared that? [1174]

The Witness: This is mine. This was prepared by me in my handwriting.

Trial Examiner Mouritsen: Was this document submitted?

The Witness: One similar to this form here.

Trial Examiner Mouritsen: That is A. F. of L. Exhibit 2, is that correct?

The Witness: Yes. And this one was presented in form similar to this.

Trial Examiner Mouritsen: Let us have that marked A. F. of L. Exhibit 2-A by the reporter.

(Testimony of Merton Kirkwood Stout.)

(The document referred to was marked A. F. of L. Exhibit 2-A for identification.)

Trial Examiner Mouritsen: Now, were those documents, Respondent Ice Company's Exhibits 3 and 7 and Board's 5 and A. F. of L. Exhibits 2 and 2-A all of the proposals in writing that you ever submitted or that the Association ever submitted to the Ice Company?

Mr. Smith: That question is objected to in that it assumes facts not in evidence.

Mr. Petersen: I will agree with counsel that Board's Exhibit 5 was not submitted to the company as a document.

Trial Examiner Mouritsen: Do you object to it on the ground he said this one is similar—2 or 2-A?

Mr. Smith: I didn't understand the witness to testify A. F. of L. Exhibit 2 was ever submitted to the Ice [1175] Company.

The Witness: I said one like this or similar to it, but I didn't say that this page here had been submitted.

Trial Examiner Mouritsen: That is what I understand, but it was one just like it.

The Witness: Similar. I don't remember whether it was just exactly like it or not.

Trial Examiner Mouritsen: It had substantially those provisions in it?

The Witness: Substantially the same things in it. [1176]

Q. (By Mr. Smith): Did you ever present any-

(Testimony of Merton Kirkwood Stout.)

thing to Mr. Willard without taking it to the Association and have the boys pass on it?

A. I believe it is said in our first minutes that we were to bargain with him and the final word was to be returned to the members for final agreement on. We might go to Mr. Willard two or three times with the same *on* in trying to reach a conclusion on it, whether it would be really rejected or not. [1180]

Trial Examiner Mouritsen: And you are also not sure whether it was merely rejected by the members and never presented at all, is that right?

The Witness: My impression was that it was submitted to Mr. Willard and returned to us, but I would not say for sure on account we had several times gone to him about this particular paragraph. [1184]

Q. (By Mr. Petersen): Did the union ever officially take any action or any group of employees?

A. It would have been taken up with the bargaining committee and the bargaining committee would tell at some meeting what Mr. Willard had rejected that we had proposed. It would be read to all members at the meeting, whatever was put in agreement that we took up as a proposal, and then we would take that up there and he might reject some parts and suggest others, and we would check these parts that he would reject and say what we could do to come to an understanding on those parts. [1187]

R. B. WHITELAW,

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Yeager): Will you state your name? A. R. B. Whitelaw.

Q. And you are an attorney located in the City of El Centro? A. Yes, sir.

Q. And you heard the testimony of Mr. Stout in regard to meetings he had with you?

A. Yes, sir.

Mr. Ryan: Just a minute, pardon me for interrupting, Mr. Examiner. May we go off the record?

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.[1188]

Q. (By Mr. Yeager): Mr. Whitelaw, do you recall the first meeting you had with Mr. Stout in regard to this Employees Association?

A. I recall he came into the office; the date I don't recall.

Q. And did you furnish him with any papers at that time? A. I did.

Q. What were they?

A. I gave him copies of the constitution and by-laws, separate papers, of the Kramer Baking Company, and I also gave him the contract between the Employees Association in the Kramer Baking Company plus the copy of the constitution and by-laws, which was one paper, I believe, of the one now

(Testimony of R. B. Whitelaw.)

known as the California Electrical Company, Imperial Ice Division, Employees Association, and also a copy of the contract of that particular Association with its employer.

Q. Did Mr. Stout, subsequent to that time, when you furnished him with those papers, come back to your office? A. He did.

Q. And what did you do for him at that time?

A. Well, to get it chronologically I could not give it to you without checking my records, and I went back during the noon hour to try to check the log of my record. At that time I had just lost the girl clerk who had been with me for a great many years, by death, and I didn't have any [1189] substitute, and I was using what stenographers I could get at that time, so no record had been kept, so I couldn't give you the dates or what was done.

But he did come in again regarding the proposed contract with the Holtville Ice Company.

Q. And did he come in and indicate what sort of a constitution he wanted drawn up?

A. Yes.

Q. And did you draw up a constitution for him?

A. I did.

Q. For the Employees Association?

A. I did.

Mr. Petersen: May I ask that you have him elaborate on that a little bit—it is rather vague and ambiguous.

Trial Examiner Mouritsen: Go ahead, Mr. Yeager.

(Testimony of R. B. Whitelaw.)

Q. (By Mr. Yeager): I will show you Exhibit No. 2 of the Employees Association, and ask you whether that is the constitution you drew up for the Employees Association? (Handing paper to the witness.)

A. That is.

Q. Now, was that substantially a copy of another constitution that you had prepared for them, Mr. Whitelaw?

A. It is supposed to be an absolute copy except changing the name of the Employees Association. It is supposed to have been an absolute copy of the same form I used for the [1190] Kramer Baking Company.

Q. I will show you Employees Association Exhibit 3, and I ask you if that is the Kramer *Banking* Company constitution that you just now referred to. (Handing document to the witness.)

A. That is right.

Q. Now, I will refer to Article 2 of Employees Association Exhibit 3 and ask you whether or not you were instructed to prepare Exhibit 2—to prepare that paragraph of Exhibit 2 which is exactly the same as that paragraph of Exhibit 3.

A. Whether I was instructed or not, I was supposed to use this identical form and thought I had used the identical form, except changing the name of the Association. In other words, it is supposed to be a correct copy *or* Employees Association Exhibit No. 3.

Q. Will you note now whether that paragraph

(Testimony of R. B. Whitelaw.)

that I referred to, Article 2 on the Employees Association constitution, is the same?

A. It is not. There is a whole line left out under Article No. 2 on Exhibit No. 2, Employees Association Exhibit No. 2, as compared with Exhibit No. 3 of the Employees Association.

Q. Was that omission intentionally done or inadvertently done?

A. Done inadvertently and it is one of those things for [1191] which we blame our stenographer, which we should blame ourselves for not having checked.

Q. Did your stenographer prepare this final draft for the Employees Association?

A. Yes; some stenographer, whether it was the girl I used I don't know. I don't remember now. I tried to check this girl and couldn't determine who actually typed it for me.

Q. Then was there any wilful omission of a line there?

A. No, it was supposed to have been identical with Exhibit No. 3, with the change of name only.

Mr. Yeager: That is all.

Trial Examiner Mouritsen: Do you have any questions?

Mr. Ryan: Yes.

Cross Examination

Q. (By Mr. Ryan): Mr. Whitelaw, are you a member of the Associated Farmers?

A. I am not.

(Testimony of R. B. Whitelaw.)

Q. Were you ever a member of the Associated Farmers? A. Yes, I was.

Q. When did you become a member and how long did you remain a member?

A. Well, we had an association which wasn't a corporation, prior to 1936.

I think our firm of Whitelaw & Whitelaw continued its membership—I don't think we paid this year's dues. [1192]

Q. This last year?

A. Yes, and it is our intention now, to pay this year's dues—the firm of Whitelaw & Whitelaw.

Q. You have been a member then since some time prior to 1936 when it became incorporated, is that correct? A. That is correct, yes, sir.

Q. Was it incorporated in 1936?

A. I think—my recollection is, and I am just basing it on my recollection, it was some time in October of 1936.

Q. You were counsel for the Associated Farmers in getting the Association incorporated?

A. Yes, I was.

Q. And you were retained by the Associated Farmers as their counsel thereafter, were you not?

A. Up until last January a year ago—not since last January but 1942, at which time our services were discontinued.

Mr. Ryan: That is all.

Trial Examiner Mouritsen: Is there anything further of this witness?

Mr. Petersen: Nothing further.

(Testimony of R. B. Whitelaw.)

Trial Examiner Mouritsen: You say, Mr. Whitelaw, you cannot recall the date when they first came to see you about this.

The Witness: No, I doubt. I don't recall the date [1193] and I did my best to check it.

My statement went out, so far as we could find out, went out between the 1st and 10th of December, 1942, for the \$25 bill. That is the only record our office shows.

We keep a daily log but unfortunately it wasn't kept at that time due to the death of the girl.

Trial Examiner Mouritsen: Did any of the other representatives of the Association visit you in your office other than Mr. Stout?

The Witness: Yes, Mr. Tom Herring and I think Mr. Harlan came into my office. I wouldn't be sure as to Mr. Harlan, but I know Tom Herring did because I remember him, but I think Mr. Harlan came to my office prior to Mr. Stout coming to the office.

Trial Examiner Mouritsen: And did you give them any documents?

The Witness: My recollection don't go to whether I did or not. I couldn't say whether I did or not.

I know the matter was discussed with them and what they should and should not do, but whether I gave them any documents or not I don't know.

Trial Examiner Mouritsen: That is all of the questions I have.

Mr. Petersen: Just one question.

(Testimony of R. B. Whitelaw.)

Q. (By Mr. Petersen): I believe you heard Mr. Willard's [1194] testimony that he came to see you on advice of Mr. Smith as being a labor relations expert.

A. I heard him, yes.

Q. About what time?

A. I wouldn't know, Mr. Petersen, I didn't check my record to see when Mr.—I didn't check that at all.

Mr. Petersen: That is all.

The Witness: I had in my mind merely trying to find this date here and I didn't check that.

Trial Examiner Mouritsen: Do you recall how long before Herring came to see you that it was that Willard came to see you?

The Witness: I don't know whether it was before or after. I don't know what time it was.

Q. (By Mr. Petersen): Were you paid a retainer by Mr. Willard for your advice?

A. No, up until a good many years—for a good many years I was attorney for the Ice Company and then I was dropped and Mr. Smith was taken on, and he was their regular attorney for the Ice Company.

It was only on this matter, a special matter, that he came to see me. On the other matters he has always gone to Mr. Smith, as far as my knowledge goes.

Mr. Petersen: That is all.

Mr. Yeager: I am through. [1195]

Mr. Whitelaw: Call Mr. Bennett.

G. G. BENNETT,

called as a witness by and on behalf of the Associated Farmers, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Whitelaw): State your full name, please. A. G. G. Bennett.

Q. And where do you reside, Mr. Bennett?

A. South of Holtville, Imperial County.

Q. How long have you resided in Imperial County? A. Since 1927.

Q. What do you do, Mr. Bennett?

A. I am a farmer.

Q. Have you farmed all during this period?

A. Yes, sir.

Q. And you are still farming? A. Yes.

Q. Are you a member and do you hold an office in the Associated Farmers of Imperial County?

A. I do.

Q. And when did you first become a member or connected with that organization?

A. As soon as it was organized. I wasn't a charter member but I was on the first Board of Directors after the [1196] regular organization was set up.

Q. And how long have you been an officer or director in that organization since that time?

A. Continuously.

Q. And do you hold an office now?

A. I am—I do.

Q. What? A. President.

Q. And how long have you been president?

(Testimony of G. G. Bennett.)

A. I haven't checked the record but I think it was in the summer of 1937.

Q. And continuously since then?

A. Continuously since then, yes.

Q. You are familiar with the Articles of Incorporation of the Associated Farmers?

A. I am.

Mr. Whitelaw: I think I gave you a copy, Mr. Ryan.

Mr. Ryan: Yes, I have one.

Mr. Whitelaw: I will ask to have it marked as Associated Farmers Exhibit No. 1.

(The document referred to was marked as Associated Farmers Exhibit No. 1, for identification.)

Q. (By Mr. Whitelaw): I will show you an instrument marked Associated Farmers Exhibit No. 1 for identification and ask you if you know what that is. (Handing exhibit to the witness.) [1197]

A. It is the Articles of Incorporation.

Q. Of what?

A. Of the Associated Farmers of Imperial County.

Q. Do you know whether or not those Articles have been amended since that time?

A. No, they have not.

Q. This is a copy only. Do you know whether or not the original is on file in the office of the Secretary of State and a certified copy is on file in the County Clerk's office of Imperial County?

A. Yes, sir, it is.

(Testimony of G. G. Bennett.)

Mr. Whitelaw: I now offer Associated Farmers Exhibit 1 in evidence.

Trial Examiner Mouritsen: Any objections?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: It is received in evidence, as Associated Farmers Exhibit 1.

(Thereupon the document referred to, heretofore marked for identification, as Associated Farmers Exhibit No. 1, was received in evidence.) [1198]

ASSOCIATED FARMERS EXHIBIT No. 1

Articles of Incorporation of

Associated Farmers of Imperial County

Know all men by these present:

That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming, and we do hereby form, a nonprofit corporation, without shares of stock, under the provisions of Title XII of Part IV of Division First of the Civil Code of California, and we do hereby certify and declare:

1. The name of this corporation is and shall be Associated Farmers of Imperial County.

2. This corporation is a corporation which does not contemplate pecuniary gain or profit to the members thereof, the purposes for which this corporation is formed are:

(Testimony of G. G. Bennett.)

To protect, preserve and maintain American Institutions and ideals; to preserve the constitutional form of Government in both Nation and State; to oppose and combat any and all doctrines or practices which imperil the maintainence of these constitutional liberties; to protect American Schools and the constitutional privileges which the educational system of America has brought to all children; to fight against the infiltration of subversive doctrines into the educational system and into the Government; to combat the dictatorship of individuals or groups; to foster and encourage respect for and to maintain law and order, particularly by cooperation with local, state and national official and governmental agencies; to promote the prompt, orderly and efficient administration of justice; and to promote and protect the economic and agricultural welfare of the citizens of the United States and particularly of the Citizens of California.

3. The county in this state where the principal office for the transaction of the business of the corporation is to be located is Imperial County, Calif.

4. The number of directors of this corporation, who are hereby given the title of "Directors", shall be seven, but the number of directors may be increased or decreased by amendment of these articles or by a by-law adoption pursuant hereto, authority being hereby expressed granted to change the number of Directors by a by-law adopted in the manner provided in the by-laws.

(Testimony of G. G. Bennett.)

The names and addresses of the persons who are to act in th the capacity of Directors until the selection of their successors are:

Names	Addresses
William L. Apple	El Centro, California
Charles E. Nice	El Centro, California
C. H. Breon	El Centro, California
D. C. Scott	Holtville, California
Elmer M. Sears	Brawley, California
O. J. Bradshaw	El Centro, California
William T. Livingston	El Centro, California

5. The authorized number and qualifications of the members, the classes of membershipm the prop-erty rights of the members in the property of the corporation, the voting and other rights and priv-ileges of the members and of each class thereof, the liability for dues or assessments and the method of collection thereof shall be set forth in the by-laws.

In Witness Whereof: we have hereunto set our hands and seals this 26th day of October, 1936.

O. J. Bradshaw
 William L Apple
 William T. Livingston
 D. C. Scott
 Elmer Sears

.....

(Testimony of G. G. Bennett.)

State of California

County of Imperial

on thisday of....., in the year,.....
before me..... a Notary Public in and
for the County of Imperial, State of California,
residing therein, duly commissioned and sworn,
personally appeared

William L. Apple

Charles E. Nice

C. H. Breon

William T. Livingston

D. C. Scott

Elmer Sears

O. J. Bradshaw

known to me to be the persons whose names are
subscribed to the within instrument, and the ac-
knowledged to me severally that they executed the
same.

Witness my hand and official seal.

(Seal)

.....

Notary Public in and for the
County of Imperial, State of
California.

State of California

County of Imperial

Charles Nice, being first duly sworn, deposes and
says:

1. That he is the regularly elected Secretary of
the Associated Farmers of Imperial County, Inc.,
and as such is familiar with the constitution and

(Testimony of G. G. Bennett.)

By-Laws of said organization, its aims and purposes, the reason for its organization:

2. That the Associated Farmers of Imperial County, Inc. is organized and will operate exclusively for educational and patriotic purposes; that it is a non-profit organization, without capital structure; that its source of income is wholly and solely from contributions made by its member or by persons and/or parties and/or organizations interested in its program; that none of its income will revert to the benefit of any private stockholders or members, that such funds as it may from time to time possess will be used for the purposes hereinbefore set forth and as set in the Articles of Incorporation;

3. That the organization came into being as a result of a series of disturbances in the agricultural districts of the State; investigation of these disturbances showed conclusively that, almost without exception, the disturbances were caused and fomented by radical and/or communistic agitators, who came into the various agricultural districts of the State with the avowed purposes of bringing about so-called labor troubles among the workers.

4. That these agitators were affiliated directly with or were members of the Communist Party, U.S.A. and/or The Trade Union Unity League, and/or the Cannery and Agricultural Workers Industrial Union or similar organizations, affiliated with, subsidiary to or sympathetic to these organizations.

(Testimony of G. G. Bennett.)

5. The farmers of the State, as a result of their experiences, concluded that their interest could be best protected by organization of a non-profit corporation to which they could forward information relative to their difficulties and from which, in turn they could receive information as to developments throughout the State. Further, it is their intention to disseminate information to all of the people of the State as to the activities of communistic agitators and leaders, not alone in agricultural districts, but where ever such activities may be found; they will conduct a campaign of education in various civic organizations, groups and bodies, and present to these organizations facts of interest. The Associated Farmers of Imperial County, Inc., therefore requests that it be exempted from the payment of the franchise tax and any and all taxes and/or charges which a non-profit, educational, and patriotic organization may be legally and eithically entitled to.

.....

Secretary
Associated Farmers of Imperial County, Inc.

Subscribed and sworn to before me this.....
day of.....193....

.....

(Testimony of G. G. Bennett.)

Q. Now what, Mr. Bennett—withdraw that question.

Are you familiar with the character of the contributions—that is who makes the contributions to the Associated Farmers?

A. Others than membership fees. [1199]

Q. Yes. A. Anybody.

Q. Can you answer that yes or no?

A. Yes.

Q. By whom are those contributions made, if you know?

A. We get money from any source from which we can get it as long as there are no strings attached to it.

Q. Are they made by employees—all right, I am leading you.

Mr. Petersen: I was just going to object.

Q. (By Mr. Whitelaw): What class of persons are they made by—in what walk of life?

Mr Petersen: Mr. Examiner, I am going to object to the question because the records of the Association would be the best evidence, if they are going to introduce this kind of testimony.

Trial Examiner Mouritsen: I will overrule the objection.

The Witness: Made by farmers, growers and shippers; flax growers, hay growers, and as I said before, anybody else from whom we can get money—professional and business men. [1200]

(Testimony of G. G. Bennett.)

Redirect Examination

Q. (By Mr. Whitelaw): Mr. Bennett, has the Associated Farmers ever contributed anything to the Holtville Ice and Cold Storage Company employees? A. No. [1209]

Mr. Ryan: I object to that as calling for a conclusion.

Trial Examiner Mouritsen: The answer is in; I will let it stand.

Q. (By Mr. Whitelaw): Have they ever contributed anything to the Holtville Ice and Cold Storage Company? A. No.

Mr. Ryan: I object to that.

Trial Examiner Mouritsen: The answer is in and I will let it stand.

Q. (By Mr. Whitelaw): Mr. Bennett, did you know of your own knowledge that Mr. Tom Herring called Mr.—I will withdraw that and reframe the question.

Did you learn or know that Mr. Tom Herring called Mr. Osborne on the telephone and asked him to come to Holtville?

A. Just by report. Mr. Osborne told me that he had.

Q. Did he also report to you that Mr. Willard had called him on the telephone?

A. No. Mr. Willard at that time—at the time Mr. Osborne told me that Herring had called him, he also told me that Mr. Willard was away.

Q. In other words, if Mr. Willard called him

(Testimony of G. G. Bennett.)

on the telephone it would have to have been subsequent to the time Mr. Herring called him?

A. That is right. [1210]

Recross Examination

Q. (By Mr. Petersen): How did you know Mr. Willard was gone when Mr. Herring called Mr. Osborne?

A. I just testified that at the same time that Mr. Osborne told me that Mr. Herring had called him on the telephone he also told me that Mr. Willard was away.

Q. On vacation or anything—did he say anything except that he was away?

A. Just away. [1211]

Q. About what time of the year was that?

A. Along in the fall some time.

Q. Did Mr. Osborne tell you anything else about his conversation with Mr. Herring?

A. Mr. Osborne said that Mr. Herring wanted to set up a small union of the workers of the Holtville Ice and Cold Storage Company.

HUGH T. OSBORNE,

having been previously duly sworn, was called by and on behalf of the Associated Farmers, and testified as follows:

Trial Examiner Mouritsen: You have already been sworn and you are the same Hugh T. Osborne who was on the stand before?

(Testimony of Hugh T. Osborne.)

The Witness: That is right.

Direct Examination

Q. (By Mr. Whitelaw): Mr. Osborne, you have been attending these meetings here, have you not?

A. Yes.

And you heard Mr. Roy Davis testify from the witness [1212] stand? A. I did.

Q. Now, when Mr. Herring called you to come to Holtville did you go to see Mr. Herring?

A. I did.

Q. Did Mr. Herring at that time tell you to go see Mr. Davis?

A. I don't recall whether it was at that time or some time shortly after that.

Q. In any event, in one of your conversations with Mr. Herring he told you to go see Mr. Davis?

A. He suggested it.

Q. Did you see Mr. Davis? A. I did.

Q. Did you have a conversation with Mr. Davis?

A. I did

Q. Did you in that conversation state to Mr. Davis words, in substance or to the effect, that Mr. Willard would close down his plant if the Teamsters Union got control? A. I did not. [1213]

Q. (By Mr. Petersen): Do you know Mr. Keith Metz? A. Yes.

Q. Did you see him over in Holtville in the month of [1218] September or early October?

Mr. Whitelaw: What year?

Mr. Petersen: 1941.

(Testimony of Hugh T. Osborne.)

The Witness: I don't remember.

Q. (By Mr. Petersen): Did you call on Mr. Keith Metz when you called on Mr. Willard in September? A. I did not.

Q. 1941? A. I did not.

Q. Did you call on him subsequently?

A. No, sir.

Q. Did you meet him any place?

A. I did not.

Q. By chance?

A. I did not—just a moment. When you say “meet him by chance”, I can't recall. I did not discuss this matter with him. [1219]

Mr. Ryan: Mr. Reporter, will you mark for identification as Board's Exhibits next in order these papers?

(The documents referred to were marked as Board's Exhibits 20 to 28, inclusive, for identification.)

Mr. Ryan: I have had marked for identification the two-week period payrolls for the year 1941, beginning with March 15, 1941, and continuing through to July 15, 1941, and have them marked in consecutive order as Board's Exhibit 20 for identification, which is March 15, 1941, payroll, through July 15th payroll, which is Board's Exhibit 28.

I now ask counsel to stipulate that these payrolls were taken from the original payroll records of the company and represent the information contained on those payrolls for the respective periods.

Mr. Smith: So stipulated.

Mr. Whitelaw: That is correct, I so stipulate.

Mr. Ryan: I offer Board's Exhibits 20 through 28 inclusive in evidence.

Trial Examiner Mouritsen: They will be received in evidence as marked.

(Thereupon the documents referred to, heretofore marked for identification, as Board's Exhibits Nos. 20 to 28, inclusive, were received in evidence.) [1223]

BOARD'S EXHIBIT No. 20

February 15, 1943

Payroll for Period Ending March 15, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool
R. H. Ireland
Lloyd Gettle
Simon Hogue
Stanley Harlan
Robert C. Hefner
W. T. Morgan
Wm. Hearen
Alfred Brown

Platform & Delivery

Joe Edwards Jr.
W. C. Hefner
Evert Broderick
Tom Herring
G. P. Drinkard
H. C. Fredinburg
Less Cardwell
John F. Thiesen
Frank Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 30

BOARD'S EXHIBIT No. 21

February 15, 1943

Payroll for Period Ending April 1, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool

R. H. Ireland

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. Chas. Hefner

W. T. Morgan

Wm. Hearen, Jr.

W. C. Hefner

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

John F. Thiesen

Fraink Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 28

BOARD'S EXHIBIT No. 22

February 15, 1943

Payroll for Period Ending April 15, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool
R. H. Ireland
Lloyd Gettle
Simon Hogue
Stanley Harlan
R. C. Hefner
W. T. Morgan
Sanford Sumner
W. C. Hefner

Platform & Delivery

Evert Broderick
Tom Herring
G. P. Drinkard
H. C. Fredinburg
Less Cardwell
John F. Thiesen
Frank Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 28

BOARD'S EXHIBIT No. 23

February 15, 1943

Payroll for Period Ending May 1, 1941

Engine Room

H. G. Miller
M. K. Stout
H. T. Pool
E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool

R. H. Ireland

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. C. Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Frank Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 27

BOARD'S EXHIBIT No. 24

February 15, 1943

Payroll for Period Ending May 15, 1941

Engine Room

Arthur Standifer

H. G. Miller

M. K. Stout

H. T. Pool

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Storeroom

Bailey Pool

R. H. Ireland

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. C. Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Marland Marshall

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Donald Wooldridge

Garage Mechanic

N. Ballard

[In pencil]: 27

BOARD'S EXHIBIT No. 25

February 15, 1943

Payroll for Period Ending June 1, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Loren Ray Oneal

R. H. Ireland

Bailey Pool

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. C. Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Marland Marshall

Ray Adcock

James Anthony

Toab Wolford

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Donald Wooldridge

Silas Ambrose Johnson

Ed Milner

G. A. Brown

Gilbert Cardwell

Garage Mechanic

Nick Ballard

[In pencil]: 35

BOARD'S EXHIBIT No. 26

February 15, 1943

Payroll for Period Ending June 15, 1941

Engine Room:

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

R. H. Ireland

Bailey Pool

Lloyd Gettle

Simon Hogue

Stanley Harlan

Charles Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Marland Marshall

L. R. Oneal

Roy Adcock

James Anthony

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Donald Wooldridge

Jack Johnson

Alfred Brown

Gilbert Cardwell

Garage Mechanic

N. Ballard

[In pencil]: 33

BOARD'S EXHIBIT No. 27**February 15, 1943****Payroll for Period Ending July 1, 1941****Engine Room**

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

P. T. Blankenship

Herman Fruhn

George R. Harlan

Dan Oneal

Store Room

Stanley Harlan
R. H. Ireland
Bailey Pool
Lloyd Gettle
Charles Hefner
Simon Hogue
W. T. Morgan
W. C. Hefner
Marland Marshall
L. R. Oneal
Ray Adcock

Platform & Delivery

Evert Broderick
Tom Herring
G. P. Drinkard
H. C. Fredinburg
Less Cardwell
Donald Wooldridge
Jack Johnson
Alfred Brown

Garage Mechanic

N. Ballard

[In pencil]: 30

BOARD'S EXHIBIT No. 28

February 15, 1943

Payroll for Period Ending July 15, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

P. T. Blankenship

Herman Fruhn

George R. Harlan

Dan Oneal

Storeroom

Stanley Harlan

R. H. Ireland

Bailey Pool

Lloyd Gettle

Charles Hefner

Simon Hogue

W. T. Morgan

L. R. Oneal

Ray Adcock

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Jack Johnson

Garage Mechanic

N. Ballard

[In pencil]: 25

Mr. Smith: It is understood, of course, these do not contain the name of superintendents or the head office man.

Mr. Ryan: I understand that.

Will you mark these, Mr. Reporter.

(The documents referred to were marked as Board's Exhibits 29 to 38, inclusive, were marked for identification.)

Mr. Ryan: I have had marked for identification the payrolls beginning March 1st, 1942, through July 15, 1942, each payroll representing a two-week payroll period.

I began with March 1, 1942, which is Board's Exhibit 29 for identification, and running through to July 15, 1942, which is Board's Exhibit 38 for identification.

I now ask counsel to stipulate that Board's Exhibits 29 through Board's Exhibit 38, inclusive, represent the information contained in the original

payroll records of the company for the respective periods and were taken from these records.

Mr. Smith: So stipulated, except you state, Mr. Ryan, that the first one, Board's Exhibit 29, was the payroll period beginning March 1st whereas, the document shows it is the payroll period ending March 1st.

Mr. Ryan: I accept that correction.

Mr. Whitelaw: So stipulated.

Mr. Petersen: I think the record would show they are [1224] not two-week payrolls.

Mr. Ryan: Semi-monthly.

Mr. Petersen: Semi-monthly and not every two weeks.

Mr. Ryan: I offer Board's Exhibits 29 through 38 in evidence.

Trial Examiner Mouritsen: I will receive them in evidence.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits 29 to 38 inclusive, were received in evidence.)

BOARD'S EXHIBIT No. 29

February 15, 1943

Payroll for Period Ending March 1, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland
W. T. Morgan
Oran Stephens
Dan ONeal
Albert Hensley
George Daily
C. D. Allen
Ray Brixey

Platform & Delivery

G. P. Drinkard
Woodrow Faulkner
Charles Hefner
Stanley Harlan
W. C. Hefner
Delber Haul Guy
Tom Herring
Joe Raine
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

Electrician

C. H. Johnston

[In pencil]: 24

BOARD'S EXHIBIT No. 30

February 15, 1943

Payroll for Period Ending March 15, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Oran Stephens

Dan Oneal

Albert Hensley

George Daily

C. D. Allen

Ray Brixey

Silas Ambrose Johnson

Platform & Delivery

G. P. Drinkard

Woodrow Faulkner

Charles Hefner

Stanley Harlan

W. C. Hefner

Nathan Otis Edwards

Tom Herring

Joe Raine

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In pencil]: 24

BOARD'S EXHIBIT No. 31

February 15, 1943

Payroll for Period Ending April 1, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Silas Ambrose Johnson

Albert Hensley

Dan Oneal

George Daily

C. D. Allen

Platform & Delivery

G. P. Drinkard

Woodrow Faulkner

Charles Hefner

Oran Stephens

Tom Herring

Stanley Harlan

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 20

BOARD'S EXHIBIT No. 32

February 15, 1943

Payroll for Period Ending April 15, 1942

Tank Room

M. K. Stout
George R. Harlan
Lloyd Gettle
Simon Hogue

Store Room

R. H. Ireland
W. T. Morgan
Silas Ambrose Johnson
Albert Hensley
Dan Oneal
George Daily
C. D. Allan

Platform & Delivery

G. P. Drinkard
Woodrow Faulkner
Charles Hefner
Tom Herring
Stanley Harlan
W. C. Hefner
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

Electrician

C. H. Johnston

[In Pencil]: 21

BOARD'S EXHIBIT No. 33

February 15, 1943

Payroll for Period Ending May 1, 1942

Tank Room

M. K. Stout
George R. Harlan
Lloyd Gettle
Simon Hogue

Storeroom

R. H. Ireland
W. T. Morgan
Stanley Harlan
Silas Ambrose Johnson
Dan Oneal
Menno Simon Nickel
Cleo K. Green
William Starner
C. D. Allan

Platform & Delivery

George Daily
Oliver Morrill
G. P. Drinkard
Woodrow Faulkner
Ted Eugster
Tom Herring
W. C. Hefner
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

Electrician

C. H. Johnston

[In Pencil]: 24

BOARD'S EXHIBIT No. 34

February 15, 1943

Payroll for Period Ending May 15, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Stanley Harlan

Silas Johnson

Dan Oneal

C. D. Allen

Cleo K. Green

William Starner

Platform & Delivery

Pearl Fauver

L

Harry Rinker

G. P. Drinkard

Raymond Bentley

Woodrow Faulkner

James Bedient

John Herron

Charles Hefner

Francies Phillips

Tom Herring

W. C. Hefner

Jake Dungan

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 27

BOARD'S EXHIBIT No. 35

February 15, 1943

Payroll for Period Ending June 1, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Silas Ambrose Johnson

Stanley Harlan

Dan Oneal

William Starner

C. D. Allen

Joe Sigrist

Manuel Mazon

LeRoy Marlin

Phillip Griffin

Dorsey Williams

Platform & Delivery

G. P. Drinkard

James Bedient

Raymond Bentley

John Herron

Harry Linker

Francies Phillips

Pearl Fauver

Tom Herring

Jake Dungan

W. C. Hefner

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 29

BOARD'S EXHIBIT No. 36

February 15, 1943

Payroll for Period Ending June 15, 1942

Tank Room

M. K. Stout

George Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Silas Johnson

Stanley Harlan

Dan Oneal
Jake Dungan
Manuel Mazon
Le Roy Marlin
Joe Sigrist
V. E. Henson
Dorsey Williams

Platform & Delivery

G. P. Drinkard
James Bedient
John Herron
William Starner
Pearl Fauver
Tom Herring
W. C. Hefner
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 25

BOARD'S EXHIBIT No. 37

February 15, 1943

Payroll for Period Ending July 1, 1942

Tank Room

M. K. Stout
George R. Harlan
Lloyd Gettle
Simon Hogue

Store Room

R. H. Ireland
W. T. Morgan
Stanley Harlan
Silas Johnson
Dan Oneal
William Starner
Le Roy Marlin
V. E. Henson
Jake Dungan
Manual Mazon
Joe Sigrist

Platform & Delivery

G. P. Drinkard
Jim Bedient
Tom Herring
W. C. Hefner
Jack Garber
Sterling Paris
James Green

Garage Mechanic

Nick Ballard

[In Pencil]: 23

BOARD'S EXHIBIT No. 38

February 15, 1943

Payroll for Period Ending July 15, 1942

Tank Room

M. K. Stout
George Harlan
Lloyd Gettle
Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Stanley Harlan

Silas Johnson

Dan Oneal

William Starner

V. E. Henson

Le Roy Marlin

Billy Allen Hogue

Platform & Delivery

G. P. Drinkard

Tom Herring

Jack Garber

James Green

Garage Mechanic

Nick Ballard

[In Pencil]: 18

Trial Examiner Mouritsen: You may proceed.

Mr. Smith: Herman Smith.

HERMAN P. SMITH,

resumed the stand for further cross examination.

Trial Examiner Mouritsen: You have already been sworn, Mr. Smith, and you are the same Herman P. Smith who was on the stand earlier in this hearing.

The Witness: That is right. [1225]

(Testimony of Herman P. Smith.)

Mr. Ryan: Mr. Reporter, will you mark this Board's exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 39 for identification.)

Mr. Smith: What is that?

Mr. Ryan: Date of termination of employment by the following men and the reasons therefor, naming E. S. Jones, M. Wooldridge, S. Harlan and E. Broderick.

Q. (By Mr. Ryan): Mr. Smith, I show you what has been marked for identification as Board's Exhibit 39, and ask you whether or not that matter was prepared under your direction and supervision.

A. It was.

Q. And is it a correct statement of the facts which it purports to set forth?

A. As evidenced by our payroll records.

Mr. Ryan: I offer it in evidence as Board's Exhibit 39.

Trial Examiner Mouritsen: Any objection?

Mr. Smith: No objection. [1237]

Mr. Whitelaw: No objection.

Mr. Petersen: May I look at it?

(Document handed to Mr. Petersen.)

Mr. Petersen: I am going to object. There is an omission on the record. It should show by the testimony so far H. G. Miller left voluntarily.

Mr. Smith: I understand the witness was asked to furnish the termination dates of those four names.

Trial Examiner Mouritsen: That is all right,

(Testimony of Herman P. Smith.)

gentlemen; I will overrule the objection. Are there any other objections to the offer?

Mr. Whitelaw: No objection.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 39 in evidence.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 39, was received in evidence.)

BOARD'S EXHIBIT NO. 39

Holtville Ice And Cold Storage Company
Holtville, California

February 16, 1943

Date of Termination of Employment By The
Following Men And The Reason Therefor:

E. S. JONES

Employment terminated May 1, 1941. Left voluntarily to go into business for himself.

M. WOOLDRIDGE

Employment terminated May 1, 1941. Left voluntarily to go to work in defense work at the coast.

S. HARLAN

Employment terminated July 15, 1942. Laid off because of no work available.

E. BRODERICK

Employment terminated September 1, 1941. Quit to go to work in defense plant in San Diego.

(Testimony of Herman P. Smith.)

Mr. Ryan: No further questions. [1238]

Recross Examination

Q. (By Mr. Whitelaw): I have one question I would like to ask Mr. Smith. Do you recollect Mr. —well, I think his name was Lloyd—do you recollect Mr. Lloyd coming to the office of the Holtville Ice and Cold Storage Company, the representative of the Teamsters Union?

A. Will you repeat the question?

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: Do I recollect if they ever came to the office?

Mr. Whitelaw: Yes. [1248]

The Witness: I have no recollection of a man by that name coming to the office.

Q. (By Mr. Whitelaw): Do you recollect two men representing themselves as Teamsters representatives and asking for an appointment with Mr. Willard? A. I do.

Q. Do you know what their names were?

A. No, I don't—I don't remember.

Q. And did you make an appointment for any definite time? A. I did.

Q. And what time of the day or what day was it you made an appointment with them for Mr. Willard? Do you recall that?

A. (No answer.)

Q. Relate the circumstances then of your conversation with them relative to this appointment, if you had such a conversation.

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: Can we fix the time when this occurred?

The Witness: As near as I can recollect it must have been the last half of October, 1941.

Q. (By Mr. Whitelaw): And what was said by you and what was said by either one or both of them?

A. They had been in, I believe it was these two same men, had been in and had left a proposal. I believe that is [1249] what it was called. They left a proposal for Mr. Willard and wanted me to give it to Mr. Willard and they had returned a few days later. I had gotten back from lunch. I usually get back from lunch around 1:30 and they came in and inquired for Mr. Willard, and Mr. Willard wasn't there and I either knew Mr. Willard was going to be back around 3:00 or had reason to believe he would be back around 3:00 o'clock that afternoon, so I told them I felt quite sure that they could see Mr. Willard at that time, and if Mr. Willard came in I would tell him and ask him to wait for them.

They said that they had another, I think, call to make, and that they would come back about 3:00 o'clock.

Q. And did Mr. Willard come in?

A. He did.

Q. And did he come in about 3:00 o'clock?

A. I believe a few minutes before, because I told Mr. Willard that they were coming back at 3:00 o'clock, so he waited.

Q. How long did he wait?

A. Oh, if I remember correctly he waited pos-

(Testimony of Herman P. Smith.)

sibly until 3:30 or a quarter to 4:00. That is usually the time Mr. Willard leaves the office in the afternoon—that is, quite frequently he does.

Q. And did you remain there all afternoon yourself? [1250]

A. Yes, I was—it was the time of the year when I wasn't taken very much away from the office. I am around the office quite regularly.

Q. What time did you leave that date, if you can remember, approximately?

A. Well, I usually leave just shortly before 5:30. I take the mail up to the post office——

Q. And had they appeared at that time?

A. They had not.

Mr. Whitelaw: That is all.

Redirect Examination

Q. (By Mr. Smith): Did they ever come back again that you saw?

A. Yes; they came back and met with Mr. Willard, because I sat in on the meeting. I remember it.

Q. Then after they met with Mr. Willard that time—do you know about what time that was?

A. (No answer.)

Trial Examiner Mouritsen: Maybe you could tell us—about how long after the first time they came there was it that they came again and met Mr. Willard?

The Witness: From the time—the first time that they contacted me when they left the proposal, I would say it was probably a three-week period elapsed, as nearly as I can recollect now. [1251]

(Testimony of Herman P. Smith.)

Mr. Petersen: Can you fix the date in relation to the date of the starting of operations of the plant that year? Was the plant in operation?

The Witness: No, I don't believe it was.

Trial Examiner Mouritsen: I think the date indicated so far, that the proposal was left, was about October 12th, and I think the later conference with Mr. Willard has been fixed at either the 26th or 28th of October, 1941. Would you disagree with that, Mr. Witness? Would you say it was a two-weeks period or a three-weeks period? In other words, what I am trying to get at is, you say about three weeks and it has been fixed so far as about two weeks. Would you say that that was incorrect?

The Witness: No, I wouldn't say it was incorrect—I don't recollect.

Q. (By Mr. Smith): Mr. Smith, to your knowledge, did they ever talk to Mr. Willard more than one time?

A. No; just the one time that I knew anything about.

Q. And had he read their proposal at that time?

A. He had not.

Q. What did he tell them?

Mr. Petersen: To which we are going to object as calling for a conclusion of the witness.

Mr. Smith: He was present.

Trial Examiner Mouritsen: Were you there when they [1252] talked with Mr. Willard?

The Witness: Yes.

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: Answer the question.

The Witness: What was the question?

Q. (By Mr. Smith): What did Mr. Willard tell them?

A. He told them he would read the proposal and I believe he told them that he wanted to take it up with his directors before he took any action on it. It was a very short meeting. That was the sum and substance of it.

Trial Examiner Mouritsen: You base your statement that he had not read the contract upon the fact he told them he had not read the contract?

The Witness: That is right.

Q. (By Mr. Smith): Then to your knowledge, Mr. Smith, did they ever talk with Mr. Willard again? A. They did not.

Q. And was any communication ever received from the American Federation of Labor until that letter which is dated January 12, 1942?

A. There was not. [1253]

Mr. Ryan: Will you mark this?

(Thereupon the document referred to was marked as Board's Exhibit No. 40, for identification.)

Q. (By Mr. Ryan): Mr. Smith, I show you what has been marked for identification Board's Exhibit 40 and ask you what it is? (Handing exhibit to the witness)

A. History of each of the following named persons, showing the following information: When first employed, layoffs. [1269]

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: Doesn't that speak for itself?

The Witness: Yes.

Q. (By Mr. Ryan): Was that prepared under your direction and supervision? A. It was.

Q. From the records of the company?

A. It was.

Mr. Ryan: I offer it in evidence and will show it to counsel.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Whitelaw: None on our part.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 40.

(Thereupon the document heretofore marked as Board's Exhibit No. 40 for identification, was received in evidence.) [1270]

BOARD'S EXHIBIT NO. 40

Holtville Ice And Cold Storage Co.

Holtville, California

February 16, 1943.

Employment History of Each of Following Named Persons, Showing Following Information:

A. When First Employed.

B. Layoffs or Discharges of Each Man by Company and Reason Therefor.

(Testimony of Herman P. Smith.)

M. K. Stout

First employed first half of June, 1933; laid off on account of no work from end of July to first of November, 1933.

George Harlan

First employed last half of April, 1938. Lay-offs were as follows: July 15th to November 1, 1938, reason—no work for this man. Layoff July 1st to September 1, 1939, on account of no work for this man.

S. Hogue

First employed Feb. 1, 1940. Layoffs as follows: From Sept. 15, 1940 to Oct. 15, 1940 on account of there being no work for this man. Laid off from August 15, 1941 to October 25, 1941. No work for this man.

L. Gettle.

First employed Jan. 1, 1940. Layoffs were as follows: From August 1, 1940 to October 15, 1940 on account of there being no work for this man. August 1, 1941 to October 25, 1941 because of no work for this man.

R. Ireland

First employed first half of October, 1939. Lay-offs were as follows: From September 15th to October 15, 1940 because of no work for this man, and from August 15, 1941 to October 25, 1941 because of no work for this man.

(Testimony of Herman P. Smith.)

W. T. Morgan

First employed January 15, 1941. Layoffs were as follows: From August 15, 1941 to November 1, 1941, on account of there being no work for this man.

S. Harlan

First employed first half of June, 1939. Layoffs are as follows: Last half of July, 1939 to January 25, 1940 on account of there being no work for this man. From June 15, 1940 to January 1, 1941 on account of there being no work for this man. From August 1, 1941 to January 10, 1942 because there was no work for him. Laid off June 15, 1942 because there was no work for him, and he has not been back to work since.

Tom Herring.

First employed last half of August, 1931. Was laid off from the first of June, 1932 to last part of October, 1932 because there was no work available. He has worked continuously since.

G. P. Drinkard

First employed first half of April, 1930. Layoffs were as follows: From November 1, 1938 to December 25, 1938 because there was no work for this man. He has worked continuously since.

F. A. WILLARD,

recalled as a witness by and on behalf of the respondent, Holtville Ice and Cold Storage Company, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Smith): You are the same F. A. Willard who was previously sworn and testified?

A. Yes, sir. [1271]

Q. Did you know or have any knowledge that any of the seven men who are named in the complaint, and who were laid off—were not reemployed, had made application to the union?

A. No, sir, I did not.

Q. Now, regarding your work at the plant in the last three or four years, has your own personal supervision at the ice plant changed any in that time?

A. Very much, yes.

Q. What has been the change?

A. Well, particularly for the last three years I have been forced to put in less time at the plant and I have encouraged each foreman and superintendent to take on more responsibility for the purpose of letting me be away more.

Q. And have you employed anyone yourself?

A. No, sir.

Q. In the last few years?

A. No, sir.

Q. Or discharged anyone?

A. No, sir.

Q. And have you spent a great deal of time away from the office or the plant in the last three or four years?

A. I have, yes.

(Testimony of F. A. Willard.)

Q. Now, has there ever been a custom at the ice plant regarding these—regarding who should get a vacation with [1276] pay?

A. Yes, there has.

Q. What has been that custom or practice?

A. When we started giving vacations with pay, we figured that anyone who worked through the vegetable season was entitled to and would get a week's vacation with pay. Later that was increased to permit them to have a week with pay and a week without pay.

Q. Well, was there ever a custom to give a week with pay and a week without pay, or did some take a week without pay and some take more?

Mr. Ryan: I object to the question as leading.

Trial Examiner Mouritsen: I will sustain the objection.

Q. (By Mr. Smith): What was the practice about those that took a week with pay and an additional week without pay? Was there any uniformity of any class of employees that only took a week without pay? A. Yes.

Mr. Ryan: I object to leading the witness in this fashion.

Trial Examiner Mouritsen: Yes.

Mr. Ryan: As to what the custom was, if there was one.

Q. (By Mr. Smith): What was the custom regarding that subject?

A. Well, there were at the time of these vacations, there [1277] were really two classes of em-

(Testimony of F. A. Willard.)

ployees: those whom we had work for the summer or the idle season. They got a week with pay and a week without pay.

The rest of the employees, they could have the rest of the summer if they wanted it.

Trial Examiner Mouritsen: You gave them a week with pay?

The Witness: Yes.

Mr. Ryan: Wait a minute, wait a minute. He did not say that, Mr. Examiner. He did not say he gave the rest of them a week with pay.

Mr. Smith: Did you?

The Witness: Yes; every one that worked throughout the vegetable season had a week with pay.

Mr. Ryan: Through the entire part of the—from the very beginning to the very end of it?

The Witness: Well, to tell the truth, we were not absolutely strict on that. If any of the foremen or superintendents turned in the names of the men who were entitled to a vacation it was never questioned, but the general practice was anyone who worked through the entire vegetable season was entitled to vacation with pay.

Q. (By Mr. Smith): Mr. Willard, I show you A. F. of L. Exhibit 2, and ask you to look it over (handing exhibit to the witness). Now, Mr. Willard, do you know whether or not [1278] the Employees Association ever presented that document or one just like it to you? A. Yes, they did.

(Testimony of F. A. Willard.)

Q. I will show you now Respondent's Exhibit 7, and I see that contains paragraphs 16, 17, 18 and 19, which are not contained in that A. F. of L. Exhibit 2.

I will ask you if they ever presented any document to you that did not contain paragraphs 16—

Trial Examiner Mouritsen: Do you mean the paragraph 16 contained in Respondent's Exhibit 7?

Mr. Smith: Yes.

The Witness: This one doesn't have paragraph 16.

Q. (By Mr. Smith): Did they ever present a document to you that did not contain that paragraph? A. Yes, they did.

Q. Well, do you know how it was—who added that?

A. That was added by the Association.

Q. And then that Exhibit 2 was somewhere along the line before you reached a final contract, was it?

A. Yes.

Q. And did you ever make any suggestions for the addition of paragraph 16? A. No.

Q. Did you raise any objection to it when it was presented to you? [1279] A. I did.

Q. Do you recall any discussion that you had with anyone, either the bargaining committee or the membership, that called on you, regarding that clause? A. Yes.

Trial Examiner Mouritsen: Let me find out about the time and who said what. [1280]

The Witness: Well, this paragraph was dis-

(Testimony of F. A. Willard.)

cussed in a bargaining committee meeting and I objected to it. The treasurer, Mr. Stout, was about the only one, as I recollect, who insisted on having it, and the final outcome was that I agreed to it.

Q. (By Mr. Smith): Now, do you definitely remember, Mr. Willard, whether or not they ever did present to you that contract that is marked A. F. of L. Exhibit 2, which did not contain that paragraph 16? A. Yes.

Mr. Petersen: To which I am going to object. The question has already been asked and answered.

Trial Examiner Mouritsen: He answered it the second time. I will leave the answer in.

Mr. Smith: I guess that is all. [1281]

HUGH T. OSBORNE

recalled as a witness by and on behalf of the Associated Farmers, having been previously duly sworn, was examined and testified further as follows:

Trial Examiner Mouritsen: You are the same Hugh T. Osborne who has heretofore been sworn and testified in this hearing?

The Witness: Yes.

Direct Examination [1295]

Q. (By Mr. Whitelaw): Now, Mr. Osborne, you heard the testimony here of Herman Pool, did you not? A. I did.

Q. He testified in substance that you met him

(Testimony of Hugh T. Osborne.)

once at his house out in the country about dark, some time in 1940, and you stated as follows:

“I am not going to let you bring the union to the Valley.”

Did you state that in substance or any other phraseology from which that could be drawn by Mr. Pool? A. No, I did not.

Mr. Whitelaw: That is all. [1296]

Mr. Ryan: No questions.

Trial Examiner Mouritsen: What did you say to Mr. Pool on that occasion?

The Witness: I was directed to Mr. Pool by Mr. Harlan and Mr. Herring, to discuss——

Trial Examiner Mouritsen: I am just asking what you said to him.

The Witness: I told him if he was interested in the independent association I would be pleased to give him any information that I had regarding the matter.

Q. (By Mr. Whitelaw): What did he say in response to that?

A. That he had already made application for membership in the A. F. of L. Union.

Trial Examiner Mouritsen: Did you say anything further?

The Witness: I don't recall what was said further. [1297]

PETE POOL,

recalled as a witness by and on behalf of the Respondent Ice Company, having been previously duly sworn, was examined and testified as follows:

Trial Examiner Mouritsen: You are the same Pete Pool who was sworn and testified this morning? [1304]

The Witness: Yes, sir.

Direct Examination

Q. (By Mr. Smith): Pete, apparently the last payroll that your brother, Bailey Pool, appears to have received from the Holtville Ice Company, was for the payroll period made on the 15th of July, 1941, at which time he had seven days coming to him.

Now, can you tell us what happened that he didn't continue service with the company between July 15th and July 30th?

A. Well, to the best of my recollection he went off the 5th one day and he didn't come back the next morning and I found out he had got in jail.

Q. How long did he stay in jail, if you know?

A. Four or five days, to the best I remember.

Q. Then did he ever ask to come back to the Holtville Ice Company after that?

A. No, sir.

Q. Did you ever ask him to come back after that?

A. No, sir.

Q. What was he doing?

A. Well, he wasn't doing anything.

(Testimony of Pete Pool.)

Q. Was he talking about going away?

A. Yes.

Q. What was he talking about? [1305]

A. Well, he talked——

Q. What were his plans?

A. He was planning to go home.

Q. Where is his home? A. In Texas.

Q. Well, do you know whether or not the law authorities at Holtville gave him any orders to get out of town?

A. Yes, that is true that was later, though.

Q. Was that when he actually left town?

A. Yes.

Q. Did he get in trouble again when they gave him that order? A. Yes, sir.

Q. What was that trouble?

A. Same trouble, drunk driving, I think it was.

Q. How many brushes with the law did he have under the same charge?

A. Well, I couldn't say to be exact. He had several runins with the law. [1306]

Trial Examiner Mouritsen: Did you ever say anything to him or did he every say anything to you about why he was leaving town?

Mr. Petersen: What was said, where was it, and what time.

Trial Examiner Mouritsen: All right, Mr. Petersen, we can only answer one question at a time. [1307]

The Witness: Well, he stayed in jail, I think, about two days this time—the last time he got in

(Testimony of Pete Pool.)

jail, and the judge—I think he was tried in Holtville before the judge, and the judge gave him his preference of either leaving town for two years or serving six months, and if I remember right he told me that he gave him 24 hours to study it over.

He came to me and asked me what I thought about it, and I told him the best thing, I thought he could do, was leave the country and join the Army and try to clear up his record.

Mr. Ryan: When was that, Mr. Pool?

The Witness: That was in 1940, some time in October.

Mr. Ryan: You mean 1941?

The Witness: Yes, somewhere along the last part of October.

Q. (By Mr. Smith): Well, that is the story of Bailey Pool, is it? A. Yes, it is. [1308]

[Endorsed]: No. 10695. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, Respondents. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed March 2, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.